

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2019

Or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____

Commission file number: 000-49799



OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

799 West Coliseum Way, Midvale, UT

(Address of principal executive offices)

87-0634302

(I.R.S. Employer Identification Number)

84047

(Zip code)

(801) 947-3100

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Exchange Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.0001 par value per share	OSTK	NASDAQ Global Market

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second quarter (June 30, 2019), was approximately \$385.9 million based upon the last sales price reported by Nasdaq. For purposes of this disclosure, shares of Common Stock held by directors and certain officers and by others who may be deemed to be affiliates of the registrant have been excluded. The exclusion of such shares is not intended to, and shall not, constitute a determination as to which persons or entities may be affiliates as that term is defined in the federal securities laws.

There were 40,325,793 shares of the Registrant's common stock, par value \$0.0001, outstanding on March 6, 2020.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Part III of Form 10-K is incorporated by reference to the Registrant's proxy statement for the 2020 Annual Stockholders Meeting, which will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this Report relates.

TABLE OF CONTENTS

	<u>Special Cautionary Note Regarding Forward-Looking Statements</u>	3
	Part I	
Item 1.	<u>Business</u>	8
Item 1A.	<u>Risk Factors</u>	17
Item 1B.	<u>Unresolved Staff Comments</u>	46
Item 2.	<u>Properties</u>	46
Item 3.	<u>Legal Proceedings</u>	46
Item 4.	<u>Mine Safety Disclosures</u>	46
	Part II	
Item 5.	<u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	47
Item 6.	<u>Selected Financial Data</u>	50
Item 7.	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	51
Item 7A.	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	66
Item 8.	<u>Financial Statements and Supplementary Data</u>	67
Item 9.	<u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	111
Item 9A.	<u>Controls and Procedures</u>	111
Item 9B.	<u>Other Information</u>	114
	Part III	
Item 10.	<u>Directors, Executive Officers and Corporate Governance</u>	114
Item 11.	<u>Executive Compensation</u>	114
Item 12.	<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	114
Item 13.	<u>Certain Relationships and Related Transactions, and Director Independence</u>	115
Item 14.	<u>Principal Accounting Fees and Services</u>	115
	Part IV	
Item 15.	<u>Exhibits, Financial Statement Schedules</u>	116
Item 16.	<u>Form 10-K Summary</u>	120
	<u>Signatures</u>	121

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SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Report on Form 10-K and the documents incorporated herein by reference, as well as our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of the federal securities laws. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. These forward-looking statements involve risks and uncertainties and relate to future events or our future financial or operating performance. The forward-looking statements include all statements other than statements of historical fact, including, without limitation, all statements regarding:

- *our strategies and plans for our retail business, including our expectations regarding the costs, benefits and risks of the initiatives related to our retail business;*
- *the strategies and plans of Medici Ventures and the costs, benefits and risks of its initiatives, including acquisitions or purchases of interests in other companies;*
- *tZERO's plans to develop financial applications of blockchain technology, including its efforts to create technology and invest in entities that support the trading of digital securities, in particular its ownership of SpeedRoute, tZERO ATS, LLC and tZERO Markets and its joint venture with Box Digital;*
- *potential negotiated equity investments in Overstock and/or tZERO;*
- *our expectations regarding the costs, benefits and risks of the TZROP offering;*
- *our expectations regarding the costs, benefits and risks of our efforts and plans to advertise or offer other additional businesses, innovations and projects that we or our subsidiaries may engage in, offer or advertise in the future;*
- *our expectations regarding trends in the furniture and home goods market;*
- *our expectations regarding Medici Land Governance Inc., a public benefit corporation;*
- *our efforts to improve our natural search results in our retail business;*
- *our future operating or financial results, or other GAAP or non-GAAP financial measures or amounts or anticipated changes in any of them;*
- *our capital requirements and our ability to fund them;*
- *the adequacy of our liquidity and our ability, if any, to increase our liquidity or capital resources;*
- *our expectations regarding our potential sale of additional shares under the Capital on DemandTM Sales agreement;*
- *our plans and expectations regarding the costs, benefits, and risks of attempting to develop technology applications including applications using or relating to blockchain technology and our plans to commercialize any of these potential applications;*
- *our expectations regarding our tax contingencies and our effective tax rate and foreign earnings;*
- *the competition we currently face and anticipate;*
- *the effects of current and future government regulation;*
- *our expectations for our international sales efforts and the anticipated results of our international operations;*
- *our plans for further changes to our business;*
- *the possibility that we may sell our retail business and all statements about the potential for stockholder approval of any such sale, the potential distribution of proceeds of any such sale, and other effects of any such sale;*
- *our expectations regarding our emphasis on home and garden product offerings;*
- *our expectations regarding our potential liabilities or exposure to claims under Delaware's Abandoned Property Law;*
- *our expectations regarding the actual costs of our employees' health insurance claims for which we may be liable; and*
- *our other statements about the anticipated benefits and risks of our business and plans.*

Further, in some cases, you can identify forward-looking statements by terminology such as may, will, could, should, likely, expect, plan, seek, intend, anticipate, project, believe, estimate, predict, potential, goal, strategy, future or continue, the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially from those contemplated by our forward-looking statements for a variety of reasons, including among others:

- *any changes we may make to our business as a result of our current ongoing review of potential strategic alternatives, which could involve a sale of our retail business and/or additional equity or debt financings;*
- *the possibility that certain of our former officers and directors being named in shareholder class action lawsuits could affect management time and attention and result in significant additional legal expenses or government enforcement actions;*

- the possibility that current investigations of the Company and/or certain of its affiliates by the SEC Division of Enforcement could have a material adverse effect on our business, financial condition, results of operations and cash flows;
- the possibility that our D&O insurance policy cost could substantially increase, through increased self-retention amounts and premium increases, and that coverage under our policy fail to adequately protect us against liability for conduct of our directors and officers;
- our significant negative working capital;
- the possibility that we will require significantly more capital than we currently have in order to pursue some or all of our business initiatives, and the fact that such capital might not be available to us on attractive terms or at all;
- the possibility that we will be unable to generate sufficient cash flow from operations, raise additional capital, or obtain debt or other financing adequate to enable us to continue our operations;
- the possibility that changes in management roles and responsibilities, the loss of key personnel, or any inability to attract and retain additional personnel could affect our ability to successfully grow our business;
- the possibility that, if we fail to comply with ongoing Nasdaq listing standards and corporate governance requirements, we could be subject to delisting;
- the possibility that future sales or other distributions of our common or preferred stock, including the contemplated distribution of our Series A-1 Preferred stock dividend in the near future, may depress our stock price;
- the possibility that we become, or that securities regulatory authorities deem that we have become, an investment company under the Investment Company Act;
- the possibility that the options granted by Medici Ventures, tZERO and Medici Land Governance could reduce our effective ownership of each of them significantly;
- the possibility of increased regulatory and integration risks resulting from our strategic relationships, joint ventures, purchases of strategic interest in other companies and acquisitions of other companies;
- the possibility that we are not able to realize our significant deferred tax assets in the future;
- current claims of intellectual property infringement to which we are subject and additional infringement claims to which we may become subject in the future;
- the possibility that we are unable to protect our proprietary technology and to obtain trademark protection for our marks;
- the possibility that our business could be harmed by one or more states successfully asserting that we are liable for the collection of sales or other taxes for periods prior to the Supreme Court's decision in *South Dakota v. Wayfair*;
- vulnerabilities related to our retail business' dependence on the Internet, our infrastructure and transaction-processing systems;
- changes to our marketing costs and strategies;
- our exposure to cyber security risks, risks of data loss and other security breaches;
- difficulties we have encountered and continue to encounter with changes that Google has made to its natural search engine algorithms, which have periodically resulted in lower rankings of our products and may continue to do so, and future changes that Google and other search engine companies may make to their natural search engine algorithms, which may have similar effects on us;
- increasing competition, including from Amazon, from well-funded companies willing to incur substantial losses in order to build market share, and from others including competitors with delivery capabilities that we cannot currently match and do not expect to be able to match in the foreseeable future;
- any downturn in the U.S. housing industry or other changes in U.S. and global economic conditions or U.S. consumer spending;
- the imposition of tariffs or occurrence of other factors, including the spread of illness, that increase the price of importing into the U.S. the types of merchandise we sell in our retail business or other supply chain challenges that limit our access to merchandise we sell in our retail business;
- the possibility that we may sell our retail business and retain the after-tax proceeds of the sale for use in our blockchain initiatives, which would result in our stockholders owning equity interests in a publicly-held corporation seeking to develop entirely new businesses and revenue streams, without the benefits of our current retail business and the approximately \$1.4 billion it generates in annual net revenues, but with most if not all of the expenses of operating a publicly-held corporation;
- the potentially substantial corporate level income tax expense we could incur if we were to sell our retail business in a taxable transaction;
- the mix of products purchased by our customers and changes to that mix;

- any claims we may face regarding cyber security issues or data breaches or difficulties we encounter regarding Internet or other infrastructure or communications impairment problems or the costs of preventing or responding to any such problems;
- any problems with or affecting our payment card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the payment card processors or any difficulties we may have maintaining compliance with the rules of the payment card processors;
- problems with or affecting the facility where substantially all of our computer and communications hardware is located or other problems that result in the unavailability of our Website or reduced performance of our transaction systems;
- any difficulties we may encounter as a result of our reliance on numerous third parties that we do not control for the performance of critical functions material to our business;
- the possibility of issues regarding product safety, content and quality, and for the proper labelling of products from our suppliers and fulfillment partners;
- the possibility that our insurance coverage and indemnity rights are unable to adequately protect us against loss;
- difficulties we may encounter in connection with our efforts to emphasize our home and garden product offerings and to brand ourselves as a home and garden shopping destination, including the risk that our sales of home and garden product offerings could decrease substantially as a result of a significant downturn in some or all of the U.S. housing market;
- difficulties we may encounter in connection with our efforts to expand internationally, including claims we may face and liabilities we may incur in connection with those efforts;
- adverse results in legal proceedings, investigations or other claims;
- any difficulties we may have optimizing our warehouse operations;
- any decrease in the volume of retail sales, particularly in home goods, and the occurrence of any event that would adversely affect e-commerce or discourage or prevent consumers from shopping online or via mobile apps;
- the possibility that our liability for our employees' health insurance claims increases as a result of more claims or larger claims than we expect and/or increases in the costs of healthcare generally;
- modifications we may make to our business model from time to time;
- any losses or issues we may encounter as a consequence of accepting or holding bitcoin or other cryptocurrencies, whether as a result of regulatory, tax or other legal issues, technological issues, value fluctuations, lack of widespread adoption of bitcoin or other cryptocurrencies as an acceptable medium of exchange or otherwise;
- the difficulty of evaluating tZERO's ability to generate revenue through its operations due to its limited operating history, and tZERO's failure to generate meaningful revenue from any commercially available blockchain-based applications as of the date of this filing;
- the possibility that no additional digital securities will be traded on the tZERO ATS, and that, other than the tZERO ATS, no other operational exchange, alternative trading system or other regulated trading venue will license the tZERO Technology Stack;
- any failure of the technology on which tZERO and its subsidiaries rely for their operations to function properly;
- the possibility that tZERO Markets does not receive the regulatory approval required to operate its anticipated business;
- the extensive regulation of tZERO's subsidiaries, which are or intend to become broker-dealers, two of which currently generate substantially all of tZERO's revenues;
- ongoing discussions with and investigations by regulatory authorities of tZERO and its broker-dealer subsidiaries;
- our inability to use tZERO's losses to offset taxable income generated by the rest of our U.S. business or conduct a tax-free spin-off;
- the possibility that our planned Boston Security Token Exchange (BSTX) will not receive the regulatory approval required to operate;
- complex and evolving U.S. and foreign laws and regulations regarding privacy, technology, data protection, and other matters;
- any inability of tZERO to maintain the technology and intellectual property rights which its business, including the tZERO Technology Stack, will likely require;
- the substantial competition faced by tZERO from known and unknown competitors, and the possibility that such competitors obtain patents covering technology critical to the operation of the tZERO Technology Stack;
- the limitation of tZERO Crypto's business in certain jurisdictions if it is unable to timely receive certain licenses it is in the process of obtaining or due to the regulations applicable to it;

- the possibility that tZERO or its technology is the subject of cyber-attacks that expose tZERO to liability and reputational harm and seriously curtail the utilization of tZERO's services or technology and result in claims against tZERO or us;
- the dependence of tZERO's core technology on the continued availability of key technology employees of tZERO and its affiliates and of tZERO on its ability to hire, retain and motivate qualified personnel;
- the vulnerability of SpeedRoute and tZERO ATS, LLC, and by extension tZERO, to changes in the business and financial condition of, or demand by certain customers for the services of, SpeedRoute and tZERO ATS LLC, due to the percentage of SpeedRoute and tZERO ATS LLC's revenue generated by a small number of major customers;
- tZERO's decision to postpone commercialization of the DLR Software, and the possibility that if tZERO does resume commercialization, it is unable to successfully launch, market, or sell its DLR Software;
- disruptions or harm to tZERO's business due to strategic transactions it makes;
- the possibility that the IRS disagrees with our characterization of the TZROP offering completed in 2018 by tZERO and the possibility that the related proceeds might be treated as income to us for federal income tax purposes;
- the risks of holding and the possibility that we are unable to sell the TZROP;
- the possibility that TZROP becomes subject to registration under the Exchange Act if tZERO has assets above \$10 million and more than a statutory minimum number of registered holders;
- the possibility that law or regulation may limit the extent to which blockchain technology may be used to enhance securities in the future;
- the possibility that regulatory authorities never permit the trading of certain digital securities or the involvement by market participants in their trading or require changes to permit such trading, limiting tZERO's business;
- the possibility that digital securities are not widely adopted and have limited users;
- the possibility that some market participants oppose the development of blockchain based systems like those central to tZERO's commercial mission;
- the uncertainty of the regulatory regime governing blockchain technologies and the possibility that new regulations or policies materially adversely affect tZERO's business;
- the possible slowing or stopping of the development or acceptance of blockchain technologies, digital assets and assets enhanced by blockchain technologies and the possible effects on tZERO's business plans;
- the potential negative impact of the price volatility of peer-to-peer digital assets and digital securities
- the technical, operational, financial, regulatory, legal, reputational, marketing and other obstacles we face in trying to create a profitable business from our blockchain initiatives;
- difficulties we may encounter in connection with our efforts to offer services to our customers outside of our retail business;
- difficulties, including expense and any operational or regulatory issues we may encounter in connection with tZERO or its subsidiaries;
- technical, operational, regulatory or other difficulties we may encounter with our Medici or tZERO blockchain and financial technology initiatives, including any difficulties we may have marketing any products or services such initiatives may offer, whether due to lack of market size or acceptance or as a result of competition from any of the numerous competitors seeking to develop competing technologies or systems or as a result of patents that may be granted to other companies or persons, and losses we may continue to incur in connection with our Medici and tZERO blockchain and technology initiatives;
- the difficulties tZERO will face in attempting to generate revenues from blockchain-based applications of any nature;
- impairment charges we may recognize with respect to assets or businesses that we, Medici Ventures or tZERO have acquired or may acquire;
- trading capabilities of the Series A-1 Preferred stock on the tZERO ATS following the Dividend (as defined below);
- uncertainty regarding the trading market for the Series A-1 Preferred stock following the Dividend, or any market reactions to such distribution;
- any liability or expense we may incur as a result of our interests in other companies, whether as a result of regulatory issues or otherwise; and
- the other risks described in this report or in our other public filings.

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this Report, especially under the headings "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These factors may cause our actual results to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events.

Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

PART I

ITEM 1. BUSINESS

The following description of our business contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Annual Report on Form 10-K, including those set forth above in the Special Cautionary Note Regarding Forward-Looking Statements or in Section 1A under the heading "Risk Factors" or elsewhere in this Annual Report on Form 10-K.

Introduction

We are an online retailer and advancer of blockchain technology. Through our online retail business, we offer a broad range of price-competitive products, including furniture, home decor, bedding and bath, and housewares, among other products. We sell our products and services through our Internet websites located at www.overstock.com, www.o.co and www.o.biz (referred to collectively as the "Website"). Although our three websites are located at different domain addresses, the technology and equipment and processes supporting the Website and the process of order fulfillment described herein are the same for all three websites. Our retail business initiatives are described in more detail below under "Our Retail Business".

Our Medici business initiatives include our wholly-owned subsidiary, Medici Ventures, Inc. ("Medici Ventures"), which conducts the majority of its business through its majority-owned subsidiary tZERO Group, Inc. ("tZERO"), a financial technology company pursuing initiatives to develop and commercialize financial applications of blockchain technologies, primarily the development and adoption of digital securities. Our Medici business initiatives seek to create or foster a set of products and solutions that leverage the transparency and immutability of blockchain technology to generate efficiencies and increase security and control in six areas: identity management, property rights and management, central banking and currencies, capital markets, supply chains and commerce, and voting systems. Medici Ventures currently holds minority equity interests in several technology companies whose focuses include the areas mentioned above. Our Medici business initiatives are described in more detail below under "Our Medici Business—Medici Ventures" and our tZERO business initiatives are described in more detail below under "Our Medici Business—tZERO".

Our company, based near Salt Lake City, Utah, was founded as a Utah limited liability company ("LLC") in 1997, reorganized as a C Corporation in the State of Utah in 1998, and reincorporated in Delaware in 2002. We launched our initial website in March 1999. As used herein, "Overstock", "Overstock.com", "the Company", "we," "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise.

Our Retail Business

For the last three fiscal years, our retail business has generated nearly all of our net revenues. In our retail business, our goal is to provide goods to furnish and accessorize "dream homes" for our target customers—consumers who seek quality, stylish merchandise at bargain prices. At December 31, 2019, we offered 2.7 million products (7.8 million SKUs), of which over 99% were in-line products (products in active production), including more than 32,000 private label products offered under twelve private label brands. We believe that the furniture and home goods market, which is highly fragmented and has traditionally been served by brick and mortar stores, will continue transitioning to online sales, particularly as Millennial consumers (which we define as those aged 20-36), who are generally comfortable shopping online, start families and move into new homes. We regularly change our product assortment to meet the evolving preferences of our customers and current trends. Our products include, among others, furniture, home décor including rugs, bedding and bath, home improvement, and kitchen items. We compete primarily based on:

- Quality customer experience with an emphasis on price, value, and a wide assortment of products delivered in a personalized format with the convenience of our mobile app, and with the benefits of our award-winning customer care;
- Proprietary technologies which we believe help us provide our customers with a quality shopping experience;
- Logistics capabilities tailored to the furniture and home goods category and developed over our many years of e-commerce experience;
- Long-term mutually beneficial relationships with our partners, which currently number approximately 3,560; and
- Our Club O Loyalty Program, which we believe increases customer engagement and retention.

For 2019, nearly all our retail sales through our Website were from transactions in which we fulfilled orders through our network of approximately 3,560 third-party manufacturers, distributors and other suppliers ("partners") selling on our Website. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our retail partners. We provide our partners with access to a large customer base and convenient services for order fulfillment, customer service, returns handling, and other services. Our supply chain allows us to ship directly to our customers from our suppliers or from our warehouses. Our retail sales also include direct sales of our own inventory shipped from our warehouses. Our warehouses primarily fulfill orders from direct sales of our own inventory, including some customer returns of partner products. Our warehouses generally ship between 800 and 2,000 packages per day and up to approximately 6,000 packages per day during peak periods.

During the years ended December 31, 2019, 2018 and 2017 our sales were almost entirely to customers located in the United States and no single customer accounted for more than 1% of our total net revenue.

Additional Offerings

We offer additional products or services that may complement our primary retail offerings but are not significant to our retail revenues.

- Businesses advertising products or services on our Website;
- Our international business where we offer products to customers outside the United States using third party logistics providers;
- Worldstock Fair Trade, a store within our Website that offers handcrafted products made by artisans all over the world to help improve the lives of people in emerging economies; and
- Supplier Oasis, a single integration point through which our partners can manage their products, inventory and sales channels, and obtain multi-channel fulfillment services through our distribution network.

Manufacturer, Distributor, and Supplier Relationships

To the extent possible we maintain manufacturer, distributor, and supplier relationships, and seek new manufacturer, distributor, and supplier relationships, and also use our working capital, to ensure a continuous allotment of product offerings for our customers. Generally, our manufacturers, distributors, or suppliers regularly communicate to us the quantity of products that are held in reserve for us, but our arrangements with them generally do not guarantee the availability of those products for a set duration. Our manufacturer, distributor, and supplier relationships are based on historical experience and are generally non-exclusive and we retain the right to select and change our suppliers at our discretion. Generally, manufacturers, distributors, and suppliers do not control the terms under which products are sold through our Website.

Sales and Marketing

We use a variety of methods to target our retail consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail, and viral and social media campaigns. We also do brand advertising through television, radio, print ads, and event sponsorships.

Customer Service

We are committed to providing superior customer service. We staff our customer service department with dedicated in-house and outsourced professionals who respond to phone, instant online chat, and e-mail inquiries on products, ordering, shipping status, returns, and other areas of customer inquiry.

Technology

We use our internally developed Website and a combination of proprietary technologies and commercially available licensed technologies and solutions to support our retail operations. We use the services of multiple telecommunications companies to obtain connectivity to the Internet. Currently, our primary computer infrastructure is in a data center in Utah. We also have other data centers which we use for backups, redundancy, development, testing, disaster recovery, and corporate systems infrastructure.

Competition

E-commerce is intensely competitive and has relatively low barriers to entry. We believe that competition in this industry is based predominantly on:

- price;
- product quality and assortment;
- shopping convenience;
- website organization and load speed;
- order processing and fulfillment;
- order delivery time;
- customer service;
- website functionality on mobile devices;
- brand recognition; and
- brand reputation.

We compete with other online retailers, traditional retailers, and liquidation "brokers" which may specifically adopt our methods and target our customers. We currently or potentially compete with a variety of companies that can be divided into several broad categories:

- online discount general retailers;
- online private sale sites;
- online specialty retailers;
- online liquidators;
- online retailers who have or are developing significant "brick and mortar" capabilities; and
- traditional general merchandise and specialty retailers and liquidators, many of which have a significant online presence.

Many of our current and potential e-commerce competitors have greater brand recognition, longer operating histories, larger customer bases, and significantly greater financial, marketing, and other resources than we do. Further, any of them may enter into strategic or commercial relationships with larger, more established and well-financed companies, including exclusive distribution arrangements with our vendors or service suppliers that could deny us access to key products or needed services, or acquisitions of our suppliers or service providers, having the same effect. Many of them do or could devote greater resources to marketing and promotional campaigns and devote substantially more resources to their website and systems development than we do. Many have supply chain operations that decrease product shipping times to their customers, have options for in-store product pick-up, allow in-store returns, or offer other delivery and returns options that we do not have. New technologies, the continued enhancement of existing technologies, developments in related areas such as same-day product deliveries, and the development of proprietary delivery systems increase competitive pressures on us.

Financial Information about Business Segments and Geographic Areas

As described further in Item 15 of Part IV, "Financial Statements"—Note 21. Business Segments, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K, we determined our segments based on how we manage our business, which, in our view, consists primarily of our Retail and Medici businesses. Our Retail business is a reportable segment. As described below, our Medici business is comprised of multiple components or operating segments, including our tZERO and Medici Ventures reportable segments. We use pre-tax net income (loss) as the measure to determine our reportable segments. As a result, tZERO and Medici Ventures are the only reportable segments of our Medici business as they are quantitatively significant. The remaining Medici business operating segment is not significant and is included in Other. See Item 15 of Part IV, "Financial Statements"—Note 21. Business Segments for information regarding our business segments and geographical areas.

Intellectual Property and Trade Secrets

We regard our domain names and other intellectual property as critical to our success. Included in our intellectual property is some of the financial technology we have developed as part of our Medici initiatives. We rely on a combination of laws and contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets.

Our Medici Business

In late 2014, we began working on initiatives to develop and advance blockchain technologies. We pursue these initiatives through our wholly-owned subsidiary, Medici Ventures and its majority-owned subsidiary tZERO. These initiatives remain in the start-up phase, and neither Medici Ventures nor tZERO has generated significant revenues from any blockchain-based technology or application of blockchain technology.

Medici Ventures

Medici Ventures' strategy is to create or foster a set of products and solutions that leverage blockchain technology to generate efficiencies and increase security and control in six areas: identity management, property rights and management, central banking and currencies, capital markets, supply chains and commerce, and voting systems. A blockchain is a cryptographically secured, distributed infrastructure, or network, which may be accessed and, in some cases, maintained by each member of the network. Medici Ventures has a team of over 50 software engineers, developers and other technologists who work in blockchain development and deployment and enterprise level software development and deployment. Medici Ventures provides the services of some of its software engineers, developers, or other technologists to other blockchain companies. Medici Ventures also owns strategic minority equity interests in several blockchain-related companies, each of which focuses on at least one of the areas mentioned above. Medici Ventures takes an active interest in and holds seats on the boards of some of these companies. All the companies in which Medici Ventures holds strategic equity interests are startup businesses, businesses in the development stage, or businesses with a short operating history. The majority of Medici Ventures' business is its 80% interest in tZERO, which, as described below, is a financial technology company pursuing potential financial applications for blockchain technologies.

See "Risk Factors—Additional Risks Relating to our Medici Business."

tZERO

tZERO is a financial technology company pursuing initiatives to develop and commercialize financial applications of blockchain technologies. tZERO's primary focus is on the development and adoption of digital securities, which are described in more detail below. tZERO focuses on developing the supply side of this marketplace by creating technology that enables issuers to issue, and relevant regulated market participants to support the issuance, trading, clearance and settlement of digital securities. tZERO also supports the demand for and adoption of such assets by developing technology for regulated venues on which those digital securities can trade, as well as investing in subsidiaries and joint venture entities that own and operate such trading venues. These investments include the alternative trading system (the "tZERO ATS") run by its wholly-owned subsidiary, tZERO ATS, LLC, formerly known as PRO Securities, LLC, which provides a licensed venue for matching buy and sell orders to its broker-dealer subscribers, including for the trading of digital securities, and its joint venture with BOX Digital Markets LLC ("BOX Digital"), intended to develop a U.S. national securities exchange facility with regulatory approvals enabling it to support trading in a type of digital security called a security token. In addition, tZERO also maintains certain non-blockchain businesses.

Throughout this report we refer to "digital securities" to describe conventional uncertificated securities where the issuer arranges for a digital "courtesy carbon copy" of the transfer agent's share registry to be viewable on the blockchain to enhance the trading experience. Securities with such digital enhancements may also be referred to as "digitally-enhanced securities". Digital securities, however, are not issued, traded, cleared, settled or custodied using distributed ledger or blockchain technology. Instead, record ownership of digital securities is kept by a U.S. Securities and Exchange Commission ("SEC") regulated transfer agent in its traditional books and records and they are traded on the relevant regulated trading venues on a book-entry basis. To enhance the investor experience, issuers arrange for a digital courtesy carbon copy of the transfer agent's share registry of holders of record to be viewable on the blockchain. The digital courtesy carbon copy of the transfer agents' books and records on the blockchain are pseudonymized (that is, such records do not identify the holders of record by name but each holder's assets are shown under a digital wallet address) and do not govern ownership of these securities. The transfer agent's conventional books and records remain as the only controlling record of ownership for corporate and securities law purposes. With respect to investors holding a digital security in a brokerage account, the controlling record of the underlying beneficial ownership is such investor's carrying broker-dealer's conventional books and records. The use of "digital" is intended solely to differentiate these securities from conventional securities which do not have the digital enhancements necessary to allow the transfer agents records to be viewable on the blockchain.

In certain other instances throughout this report we refer to "peer-to-peer digital assets" or "bearer digital assets", which may include virtual currencies or other pseudonymous bearer digital instruments (including instruments representing securities) which may trade peer-to-peer on a distributed ledger and/or rely on the distributed ledger to govern record

ownership. tZERO is focused on the development and adoption of digital securities as described above. In the future, subject to changes in the applicable regulatory landscape and the capabilities of market participants, tZERO may evolve its focus towards the advancement of digital securities to integrate blockchain technology in other ways.

tZERO's businesses include the broker-dealer activities of its subsidiaries, tZERO ATS, LLC and SpeedRoute, LLC ("SpeedRoute"). SpeedRoute provides connectivity to its registered broker-dealer customers to U.S. equity exchanges and off-exchange sources of liquidity. Additionally, tZERO has another subsidiary, tZERO Markets, LLC, that is in process of seeking regulatory approvals to operate as a broker-dealer and allow it to offer a website and mobile application that allow retail customers to conduct self-directed trading of conventional and digital securities. In addition, tZERO Markets is seeking approvals to provide certain investment banking, placement agent and best-efforts underwriting services. tZERO's remaining businesses include tZERO Crypto, Inc., a cryptocurrency wallet and exchange services business, and Verify Investor, LLC, an accredited investor verification company.

The businesses, products, and services that tZERO is pursuing or contemplating will require substantial additional funding, initially for technology development and regulatory compliance, as well as for working capital, marketing and sales, and other substantial costs of developing new products and businesses in emerging areas of technology. These costs have been and are expected to continue to be material, both to tZERO and to Overstock.

tZERO's Intellectual Property

tZERO has received certain patents that it views as critical to its success. In particular, in January 2019, it received a patent from the United States Patent and Trademark Office ("USPTO") for an order system that can integrate with conventional asset trading platforms and translate orders for "digital transaction items" (including securities, tokens, shares, cash and other assets) from broker-dealers into orders on a regulated venue which utilizes blockchain technology. In May 2019, tZERO also received a patent for a base layer technology that uses digital signatures to record and verify time-series data such as trades, executions and settlements, allowing low-latency systems, including traditional matching engines or private blockchain ledgers, to be anchored into public blockchain ledgers which are able to verify the existence of previous trades and simultaneously produce an auditable and immutable record of those transactions. These patents were recently awarded and to date have not had any material effect on tZERO's business. tZERO believes these patents provide valuable functionality to regulated market participants involved in the trading of digital securities and will assist in protecting tZERO's proprietary technologies against trading solutions developed by competitors.

tZERO's Customers

tZERO ATS, LLC and SpeedRoute, which are tZERO's primary source of revenue, are reliant upon a small group of customers for a large part of their revenue. See "Risk Factors—Additional Risks Relating to our tZERO Initiatives—*To date, SpeedRoute and tZERO ATS, LLC's revenues have come from a small number of major customers, making SpeedRoute and tZERO ATS, LLC, and by extension tZERO, vulnerable to changes in the business and financial condition of, or demand for SpeedRoute's and tZERO ATS, LLC's services by, such customers.*"

tZERO's Competitors

We believe other organizations are or may be working to develop applications for distributed ledger or blockchain technologies or other novel technologies in the financial industry or capital markets that may be competitive with tZERO and its blockchain-focused subsidiaries. Although it is difficult to obtain reliable information about blockchain activities by companies that may be our competitors, they may include numerous entities including some that are operating trading venues offshore or otherwise structured to avoid aspects of U.S. regulation.

SpeedRoute and tZERO ATS, LLC compete with and tZERO Markets will, in the event its broker-dealer application is approved, in the future compete with, a large number of broker-dealers, many of which are substantially larger and have substantially greater financial resources than SpeedRoute, tZERO ATS, LLC, tZERO Markets, tZERO or Overstock.

To the extent tZERO attempts to market its "digital locate receipt" software (the "DLR Software") in the future, tZERO would be competing with virtually all of the largest broker-dealers in the U.S., all of which have substantially greater resources than tZERO or Overstock, and some of which may generate substantial revenues and profits from the existing firmly entrenched system.

See "Risk Factors—Additional Risks Relating to our tZERO Initiatives."

Legal and Regulatory Matters

From time to time, we receive claims and become subject to regulatory investigations or other governmental actions, consumer protection, employment, intellectual property, and other commercial litigation related to the conduct of our business. We also prosecute lawsuits to enforce our legal rights. Regulatory investigations and other governmental actions as well as any litigation may be costly and time consuming and can divert our management and key personnel from our business operations. Regulatory investigations and other governmental actions as well as any such litigation may result in significant damages, associated costs, or equitable remedies relating to the operation of our business. Any such matters may materially harm our business, prospects, results of operations, financial condition, or cash flows.

These matters and other types of claims could result in legal expenses, fines, adverse judgments or settlements and increase the cost of doing business. They could also require us to change our business practices in expensive and significant ways. In addition, litigation could result in interpretations of the law that may limit our current or future business, require us to change our business practices, or otherwise increase our costs.

Additional litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, or to determine the validity and scope of the proprietary rights of others. Any litigation, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources, any of which could materially harm our business.

For further information, see (see Item 1A—"Risk Factors") and the information set forth under Item 15 of Part IV, "Financial Statements"—Note 12. Commitments and Contingencies, *Legal proceedings and contingencies*, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Government Regulation

We are subject to a wide variety of laws, rules and regulations, some of which apply or may apply to us as a result of our retail business, some of which apply or may apply to us as a result of our Medici or tZERO businesses, and others of which apply to us for other reasons, such as our status as a publicly held company or the places in which we sell certain types or amounts of products. Our retail business is subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce, and other services we offer. Existing and future laws and regulations may result in increasing expense and may impede our growth. Applicable and potentially applicable regulations and laws include regulations and laws regarding taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, employment, import and export matters, information reporting requirements, access to our services and facilities, the design and operation of websites, health and sanitation standards, the characteristics and quality of products and services, product labeling and unfair and deceptive trade practices.

Our efforts to expand our retail business outside of the U.S. expose us to foreign and additional U.S. laws and regulations, including but not limited to, laws and regulations relating to taxation, business licensing or certification requirements, advertising practices, online services, the use of cryptocurrency, the importation of specified or proscribed items, importation quotas, consumer protection, intellectual property rights, consumer and data protection, privacy, encryption, restrictions on pricing or discounts, and the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties.

Our Medici and tZERO businesses are subject to general business regulations and laws, including some of those described above, but are also affected by a number of other laws and regulations, including but not limited to, laws and regulations relating to money transmitters and money services businesses, including the requirements of the Financial Crimes Enforcement Network of the U.S. Department of the Treasury ("FinCEN") and state requirements applicable to money transmission, cryptocurrencies, public benefit corporations, provisions of various securities laws and other laws and regulations governing broker-dealers, alternative trading systems and national securities exchanges, anti-money laundering requirements, know-your-customer requirements, record-keeping, reporting and capital and bonding requirements, and a variety of other matters. Blockchain and distributed ledger platforms are recent technological innovations, and the regulation of peer-to-peer digital assets and conventional securities, insofar as blockchain technologies are applied to conventional securities, is developing. In the U.S., the businesses that we are working to develop are or may be subject to a wide variety of complex statutes and rules, most of which were implemented prior to the development of these technologies, and it is sometimes unclear whether or how various statutes or regulations apply.

tZERO ATS, LLC, a wholly-owned subsidiary of tZERO, operates the tZERO ATS, which is subject to Regulation ATS as well as other regulations, and partners with broker-dealers that are also subject to regulation by the SEC and the Financial Industry Regulatory Authority, Inc. ("FINRA"). The tZERO ATS facilitates the current trading of our outstanding Series A-1 Preferred stock as well as tZERO's Preferred Equity Tokens, Series A ("TZROP").

The joint venture that tZERO and BOX Digital announced in June 2018 is seeking regulatory approvals that would enable the parties to operate the Boston Security Token Exchange ("BSTX"), a national securities exchange facility to support trading in a type of digital security called a security token. BSTX, which will require approval from the SEC prior to beginning operations, would be subject to provisions of the Securities Exchange Act of 1934 and regulation substantially greater than that applicable to tZERO's current operations. The SEC published proposed rule changes relating to BSTX on October 11, 2019, soliciting public comments thereon. The SEC extended the review period on November 29, 2019. BOX Exchange LLC filed an amendment to the proposal on December 26, 2019, and the SEC again extended the review period on January 16, 2020. A subsequent amendment was filed by BOX Exchange LLC on February 19, 2020.

See Item 1A—"Risk Factors—Additional Risks Relating to our Medici Business" and "Additional Risks Relating to our tZERO Initiatives."

Employees

At December 31, 2019, we had approximately 1,613 full-time employees. We seasonally increase our workforce during our fourth quarter to handle increased workload in both our warehouse and customer service operations. We have never had a work stoppage and none of our employees are represented by a labor union. We consider our employee relationships to be good. Competition for qualified personnel in our industry is intense, particularly for software engineers and other technical staff.

Executive Officers of the Registrant

The following persons were executive officers of Overstock as of March 13, 2020:

Executive Officers	Age	Position
Jonathan Johnson III	54	Chief Executive Officer, President, and Director
Anthony Strong	43	Acting Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
Carter Lee	50	Chief Administrative Officer
Meghan Tuohig	39	Chief People Officer
Dave Nielsen	50	President of Retail
John Paul "J.P." Knab	38	Chief Marketing Officer
Ron Hilton	49	Chief Sourcing & Operations Officer
Krista Mathews	34	Chief Customer Officer
Joel Weight	45	Chief Technology Officer
Mark Baker	50	Chief Product Officer

Mr. Jonathan Johnson III has served as Chief Executive Officer since August 2019, President of Medici Ventures since August 2016, and as a Director since 2013. Mr. Johnson also served as our Chairman of the Board of Directors from 2014 through 2017. Mr. Johnson joined Overstock in 2002 and previously served as our President, Executive Vice Chairman, Acting Chief Executive Officer, Senior Vice President, and General Counsel. Mr. Johnson holds a bachelor's degree in Japanese from Brigham Young University and received his law degree from the J. Reuben Clark, Jr. Law School at Brigham Young University.

Mr. Anthony Strong was appointed as our Acting Chief Financial Officer in March 2020. Mr. Strong has served as Vice President of Finance and Controller since 2017, and previously served as Senior Finance Director from 2016 to 2017, and as Director of FP&A from 2013 to 2016. Mr. Strong originally joined Overstock in 2004 and has held various other roles including Assistant Controller and Accounting Manager. Mr. Strong holds a Bachelor of Science from the University of Utah.

Mr. Carter Lee has served as our Senior Vice President of Technology and People Care since 2015 and was appointed as our Chief Administrative Officer during 2018. Mr. Lee joined Overstock in 2001 and previously served as Vice President of Technology Operations and held other roles including Director of Internal Systems. Prior to joining Overstock, Mr. Lee was a Systems Engineer for Hospice of the Valley and Vice President of Technology for Motherboard Discount Center in Phoenix, AZ.

Ms. Meghan Tuohig was appointed as our Chief People Officer in March 2019. Ms. Tuohig joined Overstock in 2004 and previously served in several leadership positions, most recently as the company's Vice President of People Care and founded the Overstock Women's Network (OWN) in 2017. She also oversaw the design of Overstock's Midvale, Utah global headquarters, Peace Coliseum, which opened in 2016. Ms. Tuohig holds a Bachelor of Science from the University of Utah, received her Master of Business Administration from Westminster College, and studied interior design and architecture at New York University.

Mr. Dave Nielsen has served as the President of Retail since May 2019, and previously served as our Chief Sourcing and Operations Officer in October 2018, having returned to Overstock after serving for three and half years as the Chief Executive Officer and board member for Global Access from July 2015 to October 2018. Mr. Nielsen originally joined Overstock in 2009 and previously served as our Senior Vice President of Business Development, Senior Vice President and General Merchandise Manager and Co-President. Additionally, Mr. Nielsen also served as President and CEO of Old Town Imports, LLC, and also held several leadership positions with Payless ShoeSource, Inc. Mr. Nielsen received his bachelor's Degree in Business Management with an emphasis in Marketing from Brigham Young University.

Mr. John Paul "J.P." Knab has served as our Senior Vice President of Marketing since March 2016 and was appointed as our Chief Marketing Officer during 2018, having returned to Overstock after serving for one-year as the Senior Vice President of Marketing, Merchandising and Business Development for U.S. Water Filters in St. Paul, Minnesota from 2015 to 2016, and was appointed as our Chief Marketing Officer in August 2018. Mr. Knab originally joined Overstock in 2005 and previously served as our Vice President of Marketing and held other roles including Director of Merchandising and Director of Analytics. Mr. Knab holds an MBA with a Marketing emphasis and a bachelor's degree in Finance from Brigham Young University.

Mr. Ron Hilton has served as our Chief Sourcing and Operations Officer since May 2019, and previously served as our Vice President of Sourcing, having returned to Overstock after serving for almost two years as the President of Endygo from 2015 to 2016. Mr. Hilton originally joined Overstock in November 2009 and previously served as our Vice President of Merchandising, General Merchandise Manager, and Divisional Merchandise Manager. Additionally, Mr. Hilton also served as Vice President of Marketing at Furniture Warehouse for almost eleven years.

Ms. Krista Mathews was appointed as our Chief Customer Officer in August 2019. In this role, Ms. Mathews oversees the company's Customer Care, Consumer Insights, Brand Strategy, Club O loyalty program, and CRM teams, as well as any other customer-facing technology, strategy, product, or experience. Ms. Mathews joined Overstock in 2017 as a Category Director and was previously appointed as Vice President of Private Label and Partner Management in 2018. Prior to joining Overstock, Ms. Mathews held several leadership positions with Target Corporation in their Merchandising division from 2008 to 2017. Ms. Mathews holds a Bachelor of Arts in English and Classical Archeology from the University of Michigan.

Mr. Joel Weight was appointed as our Chief Technology Officer in February 2020. Mr. Weight joined Overstock in 2011 and previously served as Chief Operations Officer from January 2019 to February 2020 and Chief Technology Officer from October 2016 to January 2019 of Medici Ventures, Lead Architect and various other Architect roles from October 2013 to October 2016, and Principal Developer and Senior Software Developer from 2012 to 2013, as well as various other positions. Additionally, Mr. Weight also served as Senior Software Developer at Access Development Corporation for three and a half years and Lead Software Engineer, among other roles, at Sungard Higher Education for seven years and has held other senior software developer and engineer roles at various other entities. Mr. Weight holds a Bachelor of Science in Computer Science from the University of Utah.

Mr. Mark Baker was appointed as our Chief Product Officer in February 2020. Mr. Baker joined Overstock in 2011 and previously served as Vice President of Product and Technology from December 2018 to February 2020, Senior Director of Software Development from January 2017 to August 2018, Director of Software Development from September 2015 to January 2017, Director of Application Development from October 2013 to September 2015, as well as various other positions. Additionally, Mr. Baker also served as Senior Software Engineer at Scitor Corporation for eight years and Lockheed Martin for seven and a half years and has held other senior software engineer roles at various other entities. Mr. Baker holds a Bachelor of Science in Aerospace Engineering from Iowa State University.

None of our officers has an employment agreement or any specific term of office.

Available Information

We make our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, available free of charge through the Investor Relations section of our main website, www.overstock.com, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Our Internet Website and the information contained therein or connected thereto are not a part of or incorporated into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Any investment in our securities involves a high degree of risk. Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should read all of the risk factors below carefully, and in any reports we file with the SEC after we file this Form 10-K, before making any decision to acquire or hold our securities. The occurrence of any of these risks could harm our business, the trading price of our securities could decline, and investors could lose part or all of their investment.

Holders of, and potential investors in, our Series A-1 Preferred stock should also read "Additional Risks Related Primarily to our Series A-1 Preferred stock," and "Additional Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock," below.

Holders of, and potential investors in, our Series B Preferred stock should also read "Additional Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock," below.

Holders of, and potential investors in, TZROP, issued by tZERO Group, Inc. should also read "Additional Risks Related to TZROP," below.

Risks Relating to Our Company and to Our Current Review of Strategic Initiatives

We and certain of our former and current officers and directors have been named in shareholder class action lawsuits and shareholder derivative lawsuits, which could require significant additional management time and attention, result in significant additional legal expenses or result in government enforcement actions.

We and certain of our former and current officers and directors have been named in shareholder class action lawsuits and shareholder derivative lawsuits, and may become subject to further litigation, government investigations or proceedings arising therefrom. The pending litigation and any future litigation, investigations or other actions that may be filed or initiated against us or our current or former officers or directors may be time consuming and expensive. We cannot predict what losses, if any, we may incur in these litigation matters, and expect to incur significant legal expenditures in defending and responding to these litigation matters.

Any such legal proceedings, if decided adversely to us, could result in significant monetary damages, penalties and reputational harm, and will likely involve significant defense and other costs. We have entered into indemnification agreements with each of our directors and certain of our officers, requiring us to indemnify them. Further, our insurance may not cover all claims that have been or may be brought against us, and insurance coverage may not continue to be available to us at a reasonable cost. As a result, we may be exposed to substantial uninsured or under-insured liabilities, including pursuant to our indemnification obligations, which could materially adversely affect our business, prospects, results of operations and financial condition.

We are both the subjects of, and parties to, investigations by the SEC Division of Enforcement, which has required us to expend significant financial and legal resources. The resolution of those investigations may have a material adverse effect on our business, financial condition, results of operations and cash flows.

In February 2018, the Division of Enforcement of the SEC informed tZERO and subsequently informed us that it is conducting an investigation and requested that we and tZERO voluntarily provide certain information and documents related to tZERO and the tZERO security token offering in connection with its investigation. In December 2018, we received a follow-up request from the SEC relating to its investigation and relating to GSR Capital Ltd., a Cayman Islands exempted company ("GSR"). As previously disclosed, on October 7, 2019, we received a subpoena from the SEC's Division of Enforcement pursuant to a formal SEC order of investigation requiring us to produce documents and other information related to the Series A-1 Preferred stock dividend we announced to stockholders in June 2019 (the "Dividend") and requesting 10b5-1 plans entered into by certain officers and directors. On December 9, 2019, we received a subpoena from the SEC requesting documents related to the GSR transaction and the alternative trading system run by tZERO ATS, LLC. On December 19, 2019, we received a subpoena from the SEC requesting our insider trading policies as well as certain employment and consulting agreements. We have also previously received requests from the SEC regarding GSR and our communications with our former chief executive officer and director, Patrick Byrne,

and the matters referenced in the December 2019 subpoenas. We are cooperating with the SEC's investigation and have provided documents requested in the subpoenas.

Although we believe that we have fully complied with all relevant laws and regulations, there can be no assurance that the SEC will not commence an enforcement action against us or members of our management, or as to the ultimate resolution of any enforcement action that the SEC may decide to bring. Under applicable law, the SEC has the ability to impose significant sanctions on companies and individuals who are found to have violated the provisions of applicable federal securities laws, including cease and desist orders, civil money penalties, and barring individuals from serving as directors or officers of public companies. We have expended significant financial and legal resources responding to the SEC subpoena and such responses have required a significant amount of the time and attention of our senior management and personnel. Defending any enforcement action brought by the SEC against us or members of our management would involve further significant expenditures and the resolution of any such enforcement action could have a material adverse effect on our business, financial condition, results of operations and cash flows. Additionally, the outcome of any investigation related to the activities of tZERO could result in negative publicity for tZERO or us or limit the products which tZERO may be able to offer, which may have an adverse effect on the current and future business ventures of tZERO or us.

Our D&O insurance policy cost could substantially increase, through increased self-retention amounts and premium increases, and coverage under our policy could fail to adequately protect us against liability for conduct of our directors and officers.

We carry directors and officers liability insurance (D&O insurance) for losses and advancement of defense costs in the event legal actions are brought against our directors and officers for alleged wrongful acts in their capacity as directors or officers. Our current annual D&O insurance policy, effective on October 1, 2019, contains significantly larger self-insured-retention amounts and more exclusions to coverage than in the past. As such, our D&O insurance may not be adequate to fully protect the company against liability for the conduct of its directors and officers.

The costs of our D&O insurance policy premiums increased substantially in the most recent annual renewal, effective October 1, 2019, compared to the prior year policy premiums. If the costs of maintaining adequate insurance coverage increases significantly in the future, our operating results could be materially adversely affected.

We have a history of significant losses. If we do not achieve profitability or generate positive cash flow from operations in the near future, our ability to continue in business will depend on our ability to raise additional capital, obtain financing or monetize significant assets, and we may be unable to do so.

We have a history of significant losses and our losses have accelerated in recent years and we expect to incur operating and net losses in the foreseeable future. Net cash used in operating activities were \$81.6 million during 2019, and at December 31, 2019 our accumulated deficit was \$580.4 million. Our losses have accelerated in recent years and we may not be able to achieve profitability promptly or at all. We are working to improve the efficiency of our operations but may be unable to do so. Cost reductions we may implement in the future may adversely affect our business operations. If we are unable to successfully manage our business while reducing our expenses, our ability to continue in business could depend on our ability to raise sufficient additional capital, obtain sufficient financing, or sell or otherwise monetize significant assets such as our corporate headquarters. We do not expect to be able to obtain significant debt financing in the near future. Additionally, we may not be able to raise capital on acceptable terms or at all. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects.

We have significant negative working capital.

Our net working capital (current assets less current liabilities) was a negative \$38.6 million at December 31, 2019 compared to a negative \$26.2 million at December 31, 2018. Additionally, any significant declines in our revenues could result in decreases in our working capital, which would further reduce our cash balances. Our failure to generate sufficient revenues or profits or to obtain additional financing or raise additional capital could have a material adverse effect on our operations and on our ability to meet our obligations as they become due. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects.

Changes in management roles and responsibilities, the loss of key personnel, or any inability to attract and retain additional personnel could affect our ability to successfully grow our business.

Our performance is substantially dependent on the continued services and on the performance of our senior management and other key personnel. Our performance also depends on our ability to retain and motivate our officers and key employees. Our former chief executive officer and director, Dr. Patrick Byrne, and our former chief financial officer, Gregory Iverson, resigned in August 2019 and September 2019, respectively. The loss of the services of these executive officers, and any of our executive officers or other key employees for any reason, could harm our business. We do not have employment agreements with any of our key personnel. Our future success, in both our e-commerce business and in our Medici business, also depends on our ability to identify, attract, hire, train, retain and motivate other highly-skilled technical, managerial, editorial, merchandising, marketing and customer service personnel. Our failure to attract and retain the necessary personnel could have a material adverse effect on our financial results, business and prospects.

Future sales or other distributions of our common or preferred stock may depress our stock price or subject us to limitations on our ability to use our net operating and tax credit carryforwards.

Sales or other distributions of a substantial number of shares of our common stock or our preferred stock, including our potential Series A-1 dividend, in the public market or otherwise, by us or by a significant stockholder, has in the past and could in the future, depress the trading price of our common or preferred stock and impair our ability to raise capital through the sale of additional equity securities. The transfer of ownership of a significant portion of our outstanding shares of common or preferred stock in the public market or otherwise, by us or by a significant stockholder, within a three-year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income.

In addition, we may issue additional shares of our common or preferred stock from time to time in the future in amounts that may be significant. We are planning to issue approximately four million new shares of Series A-1 Preferred stock to pay the Dividend we announced in June of 2019. Further, we have sold common stock under our "at the market" sales agreement with JonesTrading in the past and may do so in the future. The sale of substantial amounts of our common or preferred stock, by us or a significant stockholder, or the perception that these sales may occur, could adversely affect the trading prices of either or both of these securities or subject us to limitations on our ability to use our net operating and tax credit carryforwards.

We are subject to the risk of possibly becoming an investment company under the Investment Company Act.

The Investment Company Act regulates certain companies that invest in, hold or trade securities. Primarily as a result of a portion of our assets consisting of minority investment positions, we are subject to the risk of inadvertently becoming an investment company. Because registration under the Investment Company Act would make it impractical for us to operate our business, we need to avoid becoming subject to the registration requirements of the Investment Company Act. To do so, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions and/or strategic initiatives due to those concerns. In addition, events beyond our control, including significant appreciation or depreciation in the value of certain of our holdings or adverse developments with respect to our ownership of certain of our subsidiaries, could result in us inadvertently becoming an investment company. If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC, that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company. If it were established that we were an investment company, it would have a material adverse effect on our business and financial operations and our ability to continue our business.

We have an evolving business model, which increases the complexity of our retail and Medici businesses.

In prior years we added additional types of services and product offerings and in some cases, we modified or discontinued those offerings, and in some cases have re-launched offerings we had previously terminated. We may continue to try to offer additional types of products or services, and we do not know whether any of them will be successful. From time to time we have also modified aspects of our business model relating to our product mix and the mix of direct/partner sourcing of the products we offer. In addition, we continue to experiment with new technologies to enhance the customer experience and iterate on delivery of new features. The additions and modifications to our business have increased the complexity of our business and impacted our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. Further, our efforts to promote a culture of experimentation amongst our technologists in an attempt to stay ahead of the competition may result in the introduction of technologies that are less mature

or stable which could cause problems in our website or back-end logistics systems. Future additions to or modifications of our business are likely to have similar effects. Further, any new business, technology, or website we launch that is not favorably received by consumers could damage our reputation or our brand. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business and prospects.

If we fail to comply with ongoing Nasdaq listing standards and corporate governance requirements, we could be subject to delisting.

Our common stock is currently listed on the Nasdaq Global Market. In order to maintain this listing, we are required to comply with various continued listing standards, including corporate governance requirements, set forth in the Nasdaq Listing Rules. These standards and requirements include an obligation to maintain a Board of Directors, a majority of whom are deemed to be independent and that we maintain an Audit Committee consisting of at least three independent Board Members. Our Board of Directors currently has five members, four of whom are deemed independent, and our Audit Committee consists of three of these independent directors. If more than one of our independent directors should cease to be on the Board within a short period of time, we may not be able to recruit one or more additional independent directors in such time period in order to have a majority of independent directors on our Board and at least three independent directors on our Audit Committee. If such a scenario was not rectified in accordance with applicable Nasdaq Listing Rules, we could become subject to Nasdaq delisting procedures.

The size or skills of our workforce may not be adequate to execute initiatives to improve the performance of our retail business effectively or at all.

We have been and are currently implementing certain initiatives to improve the performance of our retail business, and any insufficiency in the size of our workforce or any insufficiency of certain required skills of our workforce, could prevent us from engaging in certain initiatives we had previously considered and could prevent us from executing such initiatives effectively, which could have a material adverse effect on our financial results, business and prospects.

Our ownership of less than 100% of our subsidiaries may cause conflicts of interest.

Our wholly-owned subsidiary Medici Ventures owns approximately 80% of the outstanding common stock of tZERO, and tZERO employees, former employees and others own the balance of the shares. tZERO has issued employee stock options that may further dilute our ownership interest. In addition, tZERO may in the future engage in capital raising activities that could further dilute our ownership interest. Medici Ventures, tZERO and Medici Land Governance also issued employee stock options that could result in the dilution of our ownership interest in Medici Ventures, tZERO and Medici Land Governance in the future. The boards of directors of Medici Land Governance, tZERO and Medici Ventures must consider the interests of all of their stockholders, and the interests of the other stockholders may differ from our interests. Any significant divergence between our interests and the interests of other stockholders, a significant portion of whom are also likely to be employees, of our subsidiaries, could result in disagreements regarding business matters and could have an adverse effect on employee morale and on our business.

The options granted by Medici Ventures, tZERO and Medici Land Governance could reduce our effective ownership of each of them significantly.

Medici Ventures, tZERO and Medici Land Governance have granted compensatory options under their respective stock option plans and warrants have also been sold to purchase Medici Ventures common stock. If all of the currently outstanding Medici Ventures options were vested and exercised and all of the currently outstanding warrants were exercised, our ownership of Medici Ventures would decrease from 100% to 89%.

tZERO has granted compensatory options under its equity incentive plan. If all of the currently outstanding tZERO options were vested and exercised, Medici Ventures' ownership of tZERO would decrease from 80% to 74%.

If all of the currently outstanding Medici Ventures options and warrants and all of the currently outstanding tZERO options were exercised, our effective indirect ownership of tZERO would decrease from 80% to 66%.

Medici Land Governance has granted compensatory options under its equity incentive plan. If all of the currently outstanding Medici Land Governance options were vested and exercised, Medici Ventures' ownership of Medici Land Governance would decrease from 35% to 34%.

If all of the currently outstanding Medici Ventures options and warrants and all of the currently outstanding Medici Land Governance options were exercised, our effective indirect ownership of Medici Land Governance would decrease from 35% to 30%.

We are exploring strategic initiatives, and decisions we make could have material adverse effects on our business and the market price of our common stock.

We have been and are currently exploring certain strategic initiatives, and decisions we make could change our business fundamentally and increase the risks and uncertainties of our business substantially. We are considering a range of potential transactions, including additional equity or debt financings. There can be no assurance that we will pursue or consummate any strategic transaction or, if consummated, that any such transaction will ultimately be favorable to us or our stockholders. Any such transaction could materially adversely affect our business and financial results. In addition, our exploration of strategic and financing options has required and will continue to require significant time and attention by our management, and the incurrence of significant expenses. Further, our efforts to keep investors informed about our consideration of strategic alternatives may result in distraction and unrest among our employees, which may adversely affect employee engagement, morale and retention and which could have a material adverse effect on our financial results, business and prospects.

Our previous efforts to sell our retail business could have a materially adverse effect on our business, financial results and future prospects.

As a consequence of our previous discussions with potential bidders for our retail business, or any future discussions that may arise as a result of our previous efforts, it may be possible for potential bidders to misappropriate intellectual property and other confidential information from us, which in turn could have a material adverse effect on our financial results, business operations and prospects. Our previous efforts to sell our retail business could result in future offers from potential bidders and, if we sell our retail business as a result of any such offer, our revenues would decrease to an insignificant amount and we would become a much smaller company. Consequently, risks relating to our Medici businesses, including our tZERO initiatives, which may currently be immaterial to us, would likely each become material risks to us. See "Additional Risks Relating to our Medici Business," and "Additional Risks Relating to our tZERO Initiatives" below. Our retail business is a relatively mature and predictable business compared to our Medici initiatives, which have a short history, minimal revenues, significant expenses, significant losses and significant uncertainties, and conduct business in a new and rapidly changing industry. We would continue to bear most of the expenses we currently bear as a publicly held company but would have to build a new business and develop new sources of revenue based on our blockchain initiatives, and there is no assurance that we would be able to do so or, even if we could do so, that our new business could become profitable. Further, a sale of our retail business in a taxable transaction could result in a substantial corporate level income tax expense for the Company. If we sell our retail business, at present we do not expect to submit any transaction to a stockholder vote unless we are required to do so, whether by applicable law or otherwise, and we currently expect to retain all of the after-tax proceeds of the sale for use in our blockchain initiatives. If we sell our retail business, the Compensation Committee of our Board of Directors may accelerate the vesting, in whole or in part, of some or all outstanding restricted stock units ("RSUs") under our 2005 Equity Incentive Plan, which would result in an increase in the number of shares outstanding and would dilute stockholders' ownership of our company. As a result of any such actions, the market price of our securities, our business, financial results and prospects could be materially adversely affected.

Strategic relationships, joint ventures, purchases of strategic interests in other companies and acquisitions of other companies involve numerous risks, including increased regulatory and integration risks and may require additional capital investment.

We have developed strategic relationships, entered into joint ventures, purchased strategic interests in other companies, and acquired other companies, and we expect to pursue and engage in similar types of activities in the future. Each of these types of business transactions involve numerous risks, including difficulties in the evaluation of business opportunities and risks, including regulatory and integration risks, as well as difficulties in the assimilation of acquired operations and products. These types of transactions can also result in the diversion of management's attention from other business matters, employee retention issues, and the risk of liability for liabilities of acquired companies. We may not be able to successfully integrate businesses, operations, personnel, services, products or other assets that we have acquired or may acquire in the future. In addition, as discussed under "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Off-Balance Sheet Arrangements", we have a \$5 million contingent obligation to provide additional funding in the future to our BSTX joint venture if and when, during the first 48 months after the establishment of the entity, the aggregate cash balance of BSTX's combined bank accounts fall below \$2 million for any reason.

Further, acquisitions may also create a need for additional accounting, tax, compliance, documentation, risk management and internal control procedures, and may require us to hire additional personnel to implement, perform and/or monitor such procedures. To the extent our procedures are not adequate to appropriately implement, perform and/or monitor all necessary procedures relating to any new or expanded business, we could be exposed to a material loss or regulatory sanction. We may also recognize impairment charges as a result of future acquisitions. In addition, we may be unable to sell or otherwise monetize any of the interests or companies or other assets or rights we have acquired or may acquire in the future. We also may be unable to maintain our strategic relationships, including those with joint venture partners, or develop new strategic relationships. The occurrence of any of the foregoing which could have a material adverse effect on our financial results, business and prospects.

We have significant deferred tax assets, and we may not be able to realize these assets in the future.

We have established a valuation allowance for our net deferred tax assets, primarily due to realized losses and uncertainty regarding our future taxable income. In addition, the transfer of ownership of a significant portion of our outstanding shares of common or preferred stock in the public market or otherwise, by us or by a significant stockholder, within a three-year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income. Determining whether a valuation allowance for deferred tax assets is appropriate requires significant judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of, a valuation allowance against deferred tax assets. We intend to maintain a valuation allowance on our net deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances.

We are currently subject to claims that we have infringed intellectual property rights of third parties and may be subjected to additional infringement claims in the future.

We are currently and may in the future be subject to claims that we have infringed the intellectual property rights of others, by offering allegedly infringing products or otherwise. We have contested and expect to continue to contest claims we consider unfounded rather than settling such claims, even when we expect the costs of contesting the claims to exceed the cost of settlement. Any claims may result in significant expenditure of our financial and managerial resources and may result in us making significant damages or settlement payments or changes to our business. We could be prohibited from using software or business processes, or required to obtain licenses from third parties, which could be expensive or unavailable. Any such difficulties could have a material adverse effect on our financial results, business and prospects.

We may be unable to protect our proprietary technology and to obtain trademark protection for our marks.

Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We rely on a combination of laws and contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property or trade secrets without authorization. In addition, we cannot ensure that others will not independently develop similar intellectual property. Third parties have in the past recruited and may in the future recruit our employees who have had access to our proprietary technologies, processes and operations. These recruiting efforts expose us to the risk that such employees and those hiring them will misappropriate and exploit our intellectual property and trade secrets. We may be unable to protect against such risks, in the United States or elsewhere, which could have a material adverse effect on our business. Although we have registered and are pursuing the registration of our key trademarks in the United States and some other countries, some of our trade names may not be eligible to receive registered trademark protection. In addition, effective trademark protection may not be available or we may not seek protection in every country in which we market or sell our products and services, including in the United States. Our competitors might adopt product or service marks like our marks or might try to prevent us from using our marks. Any claim by another party against us, or customer confusion related to our trademarks, or our failure to obtain trademark registration, could have a material adverse effect on our financial results, business and prospects.

If one or more states successfully asserts that we are liable for the collection of sales or other taxes for periods prior to the Supreme Court's recent decision in South Dakota v. Wayfair, our business could be harmed.

Prior to the Supreme Court's 2018 decision in South Dakota v. Wayfair, in which we were a named party, to overturn its 1992 decision in Quill v. North Dakota, we generally did not collect sales or other similar taxes on sales of goods into states where we had no duty to do so under Quill. Some jurisdictions where we did not collect sales or other taxes have asserted that we should have done so, and other jurisdictions could in the future assert that we should have collected sales taxes or other taxes when we did not, which could have a material adverse effect on our business, regardless of the ultimate outcome.

Our international business efforts could adversely affect us.

We sell products in international markets. International sales and transactions are subject to inherent risks and challenges that could adversely affect us, including:

- the need to develop new supplier and manufacturer relationships;
- the need to comply with additional U.S. and foreign laws and regulations;
- changes in international laws, regulatory requirements, taxes and tariffs;
- our limited experience with different local cultures and standards;
- geopolitical events, such as war and terrorist attacks;
- the risk that the products we offer may not appeal to customers in international markets; and
- the additional resources and management attention required for such expansion.

Our international business could expose us to penalties for non-compliance with laws applicable to international business and trade, including the U.S. Foreign Corrupt Practices Act, which could have a material adverse effect on our business. Foreign data protection, privacy and other laws and regulations are different and often more restrictive than those in the United States. Compliance with such laws and regulations will result in additional costs and may necessitate changes to our business practices, which may adversely affect our business. To the extent that we make purchases or sales denominated in foreign currencies, we would have foreign currency risks, which could have a material adverse effect on our financial results, business and prospects.

Additional Risks Relating to our tZERO Initiatives

tZERO has a limited operating history, which makes it hard to evaluate its ability to generate revenue through operations, and to date, has not generated revenue from any commercially available blockchain-based applications.

tZERO was formed in 2014 to develop blockchain and financial technology as part of Overstock's Medici initiatives. tZERO's limited operating history and the relative immaturity of the blockchain industry make it difficult to evaluate its current business and future prospects. tZERO has encountered, and will continue to encounter, risks and difficulties frequently experienced by growing companies in rapidly developing and changing industries, including challenges in forecasting accuracy, determining appropriate uses of its limited resources, gaining market acceptance, managing a complex and evolving regulatory landscape and developing new products. tZERO's current or future operating model may require changes in order for it to scale its operations efficiently and be successful. Investors in our common stock should consider tZERO's business and prospects in light of the risks and difficulties it faces as an early-stage company focused on developing products in the field of financial technology.

To date, tZERO has focused primarily on developing its business and exploring novel applications of blockchain technology. This has included developing a suite of technologies which enable the trading of digital securities (the "tZERO Technology Stack") and using this technology to offer products and services to potential issuers of digital securities and regulated market participants. Digital securities are conventional uncertificated securities where the issuer arranges for a digital "courtesy carbon copy" of the transfer agent's share registry to be viewable on the blockchain to enhance the trading experience and may also be referred to as "digitally-enhanced securities". tZERO has generated limited revenue, no meaningful portion of which can be attributed to its commercialization of the tZERO Technology Stack or the support of such issuers and regulated market participants and has accumulated losses since its inception. As such, tZERO has historically been dependent upon continued financial support from us. If we are unable to generate positive cash flow in our retail business, raise additional capital, obtain financing, or sell or otherwise monetize significant assets, we may be unable to continue funding tZERO at the rate or levels we would otherwise do, which could have a material adverse effect on us and on the current and future business of tZERO.

To date only two digital securities are traded on the tZERO ATS and, other than the tZERO ATS, no other operational exchange, alternative trading system or other regulated trading venue licenses the tZERO Technology Stack.

tZERO continues to develop the tZERO Technology Stack and offer it as part of its services to potential issuers of digital securities and regulated market participants. As of December 31, 2019, tZERO has only utilized the tZERO Technology Stack to digitally-enhance the Series A-1 Preferred stock (exchanged from the Series A Preferred stock in May 2019) and TZROP, which are the only digital securities trading on the tZERO ATS. tZERO has been engaged to provide technology services, which will utilize the tZERO Technology Stack, to a select number of other prospective issuers of digital securities but there can be no assurance that tZERO will be engaged to provide these services by additional issuers in the future, that these services, if provided, will be profitable, or that these securities will trade on the tZERO ATS.

Additionally, the tZERO Technology Stack is only utilized by regulated market participants facilitating the trading of the Series A-1 Preferred stock and TZROP. These entities include the tZERO ATS, which is owned by a subsidiary of tZERO, and Dinosaur and ETC. BSTX plans to use the tZERO Technology Stack but is not yet operational and requires regulatory approval before it may begin operations. The trading of digital securities and the technology used by regulated market participants to support the trading of digital securities implicates complex technological considerations and raises numerous legal and regulatory issues that will need to be addressed—likely, in consultation with the regulators of regulated market participants facilitating such trading. As a result of these technological, legal and regulatory considerations, tZERO may not be able to successfully market and commercialize the tZERO Technology Stack to other market participants. If tZERO is unable to successfully market and commercialize the tZERO Technology Stack, tZERO's business plans would be materially adversely affected. See "Risks Related to the Development of the tZERO Technology Stack" below.

The technology on which tZERO and its subsidiaries rely for its operations may not function properly.

The technology on which tZERO and its subsidiaries and licensees rely, including the technology underlying the tZERO Technology Stack and the wallet and exchange services provided by tZERO Crypto, may not function properly, which would have a material adverse effect on tZERO's plans, operations and financial condition. Although the tZERO Technology Stack has worked for the Series A Preferred stock, Series A-1 Preferred stock and TZROP, trading in these securities has been extremely limited, and consequently the tZERO Technology Stack has not been tested with significant trading volume. We could experience a significant increase in trading volume for the Series A-1 Preferred stock once the planned Dividend is distributed, which will stress the tZERO Technology Stack in new ways. Similarly, while tZERO Crypto's technology has proven suitable for its wallet and exchange services mobile application to date, the volume of activity on the application has been limited, and as a result has not been tested at scale. tZERO and its subsidiaries' technology may malfunction because of errors in the underlying technology, an unanticipated increase in transactions using the technology or as a result of cyber-attacks or external security breaches. If tZERO or its subsidiaries' technology does not work as anticipated or malfunctions, any resolution of the issue may take time and be costly to implement or there may be no solution or alternative technology available. The importance of this technology to tZERO's operations means that any problems in its functionality would have a direct materially adverse effect on tZERO's plans and expectations for revenues from its blockchain applications and expose it to material loss. Any such technological problems could have a material adverse effect on tZERO's prospects, operations and financial condition and a material adverse effect on us.

tZERO Markets may not receive the regulatory approval it requires to operate its anticipated business.

tZERO Markets, LLC ("tZERO Markets") was formed in May 2019 to offer certain brokerage (including for retail customers), investment banking, placement agent and best-efforts underwriting services for traditional equities and digital securities. tZERO Markets has applied for regulatory approval, including by filing a Form BD and New Member Application with FINRA, and is in correspondence with the relevant regulators, to permit it to offer such services.

We believe that digital securities should be treated as any other conventional, uncertificated book-entry security. However, various regulators may disagree with this assertion and conclude that the digital securities should not be treated as a traditional investment security. For example, we do not believe that tZERO Markets will offer brokerage services with respect to any "digital asset securities" within the meaning of the July 8, 2019 Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities. However, federal securities regulatory authorities may disagree with that conclusion and tZERO Markets could be required to take further steps with regulators to obtain approval to start business operations. Additionally, tZERO's other broker-dealer subsidiaries are subject to investigations by the SEC and FINRA, which may indirectly impact tZERO Markets' regulatory approvals. As a result, there may be delay in the receipt of the regulatory approvals tZERO Markets requires to operate, if they are received at all. In the event tZERO Markets is not able to receive the regulatory approvals it requires to provide the services it intends or there is significant delay in tZERO Markets' receipt of such approvals it may be

forced to revise its business plan. Any such revision could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

tZERO ATS, LLC and SpeedRoute, two subsidiaries of tZERO that currently generate substantially all of tZERO's revenues, are registered broker-dealers and are subject to extensive regulation.

Broker-dealers are subject to extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization ("SRO") rules. tZERO ATS, LLC and SpeedRoute, which currently generate substantially all of tZERO's revenues, are registered with the SEC as broker-dealers under the Exchange Act and in the states in which they conduct securities business and are members, and subject to the rules, of FINRA, and other SROs (as applicable). In addition, tZERO ATS, LLC owns and operates the tZERO ATS, an SEC-registered alternative trading system. tZERO ATS, LLC and SpeedRoute are subject to regulation, examination, investigation and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and SROs with which they are registered or licensed or of which they are a member.

Any failure of tZERO ATS, LLC or SpeedRoute to comply with all applicable rules and regulations or satisfy FINRA, the SEC, or any other regulatory authority with which such subsidiary must comply could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us. In addition, tZERO Markets may be subject to even more extensive regulations. See "*tZERO Markets intends to be registered as a broker-dealer and would be subject to extensive regulation, which is anticipated to be more rigorous and expensive to establish and maintain than for tZERO's other broker-dealer subsidiaries.*" below.

tZERO Markets intends to be registered as a broker-dealer and would be subject to extensive regulation, which is anticipated to be more rigorous and expensive to establish and maintain than for tZERO's other broker-dealer subsidiaries.

tZERO Markets has applied for regulatory approvals to allow it to conduct certain brokerage and investment banking activities, including certain activities which tZERO's other broker-dealer subsidiaries have not historically provided, in particular by providing broker-dealer services to retail investors. If these approvals are received, tZERO Markets will become a registered broker-dealer under the Exchange Act and a member of FINRA and the Securities Investor Protection Corporation and will be subject to regulation, examination, investigation and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and SROs with which it becomes registered or licensed or of which it becomes a member. In addition, because tZERO Markets intends to provide broker-dealer services that tZERO's other broker-dealer subsidiaries have not historically provided, in particular by providing broker-dealer services to retail investors, certain of these legal and regulatory requirements will be new to tZERO. We expect that federal and state securities regulators will require enhanced supervision, compliance and control procedures for tZERO Markets as a result of servicing retail investors, and that such requirements will be more expensive to establish, implement and maintain than those for tZERO ATS, LLC and SpeedRoute.

Any failure of tZERO Markets to comply with all applicable rules and regulations or satisfy FINRA, the SEC, or any other regulatory authority with which it must comply could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us. See also "*tZERO ATS, LLC and SpeedRoute, two subsidiaries of tZERO that currently generate substantially all of tZERO's revenues, are registered broker-dealers and are subject to extensive regulation.*" below.

tZERO's broker-dealer subsidiaries and tZERO are involved in ongoing discussions with and are subject to investigation by regulatory authorities.

tZERO's broker-dealer subsidiaries, tZERO ATS, LLC and SpeedRoute, and tZERO have been and remain involved in ongoing oral and written communications with regulatory authorities in connection with ongoing examinations, inquiries, or investigations, which may result in trading halts on the tZERO ATS and financial and other settlements or penalties. Additionally, on December 9, 2019, we received a subpoena from the SEC requesting documents related to, among other things, the tZERO ATS. Any failure of tZERO or its broker-dealers to satisfy FINRA, the SEC, or any other regulatory authority that they are in compliance with all applicable rules and regulations could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

Our ownership in tZERO is below the threshold required to permit us to use its losses to offset taxable income generated by the rest of our U.S. business and is below the threshold required to conduct a tax-free spin-off.

Due to our ownership percentages of both tZERO common stock and TZROP, we own less than the required percentage to file a federal consolidated income tax return. tZERO therefore files a separate federal tax return from the rest of our U.S. domestic operations, and as a result, certain tax attributes, such as federal net operating losses and tax credits, generated by tZERO are not available to offset taxable income generated by the rest of our U.S. domestic operations, and vice versa. Additionally, among other gating factors, our ownership percentage is also currently below the level required to conduct a tax-free spin-off of tZERO, and therefore, at this time we do not believe that a tax-free spin-off of the tZERO business is a viable option.

There can be no assurance that BSTX will receive the regulatory approval it requires to operate.

tZERO and BOX Digital have entered into a joint venture intended to develop a national securities exchange facility of BOX Exchange LLC ("BSTX") that would facilitate the trading of a type of digital security called a security token that would utilize the tZERO Technology Stack. The SEC published proposed rule changes relating to BSTX on October 11, 2019, soliciting public comments thereon. The SEC extended the review period on November 29, 2019 and the SEC again extended the review period on January 16, 2020. In addition, a subsequent amendment was filed by BOX Exchange LLC on February 19, 2020.

The application of federal securities law and other bodies of law to assets enhanced by blockchain technology is subject to significant uncertainty and likely to rapidly evolve as government agencies take greater interest in them. As a result, there may be delay in the receipt of the regulatory approvals BSTX requires to operate, if they are received at all. In the event BSTX is not able to receive the regulatory approvals it requires to begin operations or there is significant delay in BSTX's receipt of such approvals it may be forced to revise its anticipated operations. Any such revision could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

tZERO's and its subsidiaries' businesses are subject to complex and evolving U.S. and foreign laws and regulations regarding privacy, technology, data protection, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to their business practices, increased cost of operations or otherwise harm their businesses.

tZERO and its subsidiaries are subject to a variety of laws and regulations in the United States and abroad that involve matters central to its business, including user privacy, data protection and intellectual property, among others. Foreign data protection, privacy, and other laws and regulations are often more restrictive than those in the United States. These U.S. federal and state and foreign laws and regulations are constantly evolving and can be subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which tZERO and its subsidiaries operate.

tZERO and its subsidiaries have adopted policies and procedures they believe are appropriate to comply with these laws. The growth of their respective businesses and expansion outside of the United States may increase the potential of violating these laws or its internal policies and procedures. The risk of being found in violation of these or other laws and regulations is further increased by the fact that many of these have not been fully interpreted by the regulatory authorities or the courts and are open to a variety of interpretations. Any action brought against tZERO or its subsidiaries for violation of these or other laws or regulations, even if tZERO or its subsidiaries successfully defend against it, could cause tZERO or any of its subsidiaries to incur significant legal expenses and divert its management's attention from the operation of its business. If its operations are found to be in violation of any of these laws and regulations, it may be subject to any applicable penalty associated with the violation, including civil and criminal penalties, damages and fines, it could be required to refund payments received by it, and it could be required to curtail or cease its operations. Any of the foregoing consequences could seriously harm tZERO's or any of its subsidiaries' business and their financial results. These existing and proposed laws and regulations can be costly to comply with and can delay or impede the development of new products, result in negative publicity, increase tZERO's or any of its subsidiaries' operating costs, require significant management time and attention, and subject any of them to claims or other remedies, including fines or demands that they modify or cease existing business practices.

The development and operation of tZERO's business, including the tZERO Technology Stack, will likely require, technology and intellectual property rights.

The ability of tZERO to operate its businesses, including its efforts to develop and market the tZERO Technology Stack, may depend on technology and intellectual property rights that tZERO may license from unaffiliated third parties. If for

any reason tZERO were to fail to comply with its obligations under an applicable license agreement, or were unable to provide or were to fail to provide the technology and intellectual property that tZERO or any licensee requires, their operations would be negatively affected, which would have a material adverse effect on tZERO's operations and financial condition and could have a material adverse effect on us.

tZERO may face substantial competition from known and unknown competitors as well as the risk that one or more of them may obtain patents covering technology critical to the operation of the tZERO Technology Stack.

We believe that a number of organizations are or may be working to develop applications for distributed ledger or blockchain technologies or other novel technologies in the financial industry or capital markets that may facilitate or enhance the experience of trading securities or other financial assets that may be competitive with tZERO's own technology, including its patented technology. As the blockchain industry matures, tZERO expects that larger existing companies in the financial services and technology industries may compete with it in providing technological solutions related to the capital markets or other potential areas of business tZERO may enter. Such competitors may develop technology for the trading of securities which may or may not utilize blockchain technology which may provide a more attractive trading solution than tZERO may be able to provide. Any or all of them may also compete with tZERO now or in the near future for the time and attention of regulators and for the services of persons with the expertise it needs. Some or all of such organizations may have substantially greater technological expertise, experience with blockchain technologies or the capital markets and/or financial resources than tZERO or Overstock has, and many of them appear to be attempting to patent technologies that may be competitive with or similar to the technology tZERO has developed and patented. tZERO does not have access to detailed information about the technologies these organizations may be attempting to patent. If other persons, companies or organizations obtain a valid patent covering technology critical to tZERO's business, tZERO, issuers of digital securities or regulated market participants that need the relevant technology in order to operate as intended might be unable or unwilling to license the technology, and it could become impossible for tZERO to successfully develop or market the tZERO Technology Stack, which could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

Further, certain of tZERO's subsidiaries may also face competition in the areas of their respective businesses including money services, accredited investor verification services, or broker-dealer services, and these competitors may have substantially greater resources than tZERO or its subsidiaries. Any or all of them may compete with tZERO's subsidiaries now for current business or in the near future for potential business.

tZERO Crypto's business may be limited in certain jurisdictions if it is unable to timely receive certain licenses it is in process of obtaining or due to the regulations applicable to it.

The business of tZERO's subsidiary tZERO Crypto, Inc. ("tZERO Crypto"), formerly known as Bitsy, Inc., is a mobile application that allows consumers to buy, sell and hold supported cryptocurrencies. Various aspects of the business that tZERO Crypto is engaging in are heavily regulated. Both the federal government and virtually every state in the U.S. regulates money transmitters and money services businesses. In some states, the licensing requirements and regulations expressly cover companies engaged in digital currency activities; in certain other states it is not clear whether or how the existing laws and regulations apply to digital currency activities. tZERO Crypto is applying for licenses to operate as a money transmitter (or its equivalent), as required, and has obtained such licenses in many states and territories. tZERO Crypto has also registered with FinCEN. There can be no assurance that tZERO Crypto will be able to obtain money transmitter licenses on a timely basis in all states where they have not already been obtained, that they will be obtained at all, or that it will be able to retain such licenses over time as its business or applicable law and regulation evolve, which may limit the services tZERO Crypto is able to offer in certain jurisdictions or require potential product changes.

tZERO Crypto is subject to extensive regulation.

As a money transmitter (or equivalent) licensed in multiple states and territories and due to its registration with FinCEN, tZERO Crypto is subject to obligations and restrictions with respect to various anti-money laundering, know-your-customer, record-keeping, reporting, capital and bonding requirements, limitations on the investment of customer funds, and examination and inspection by state and federal regulatory agencies. Regulations relating to money transmission and cryptocurrencies are evolving quickly and compliance with existing and evolving requirements requires the dedication of significant resources by tZERO Crypto. As a result, in the event tZERO Crypto was unable to comply with, or dedicate the resources necessary to comply with all rules and regulations or satisfy state and federal regulatory authorities with which it must comply, tZERO Crypto may be subject to additional liability, including governmental fines, restrictions on its business, or other sanctions, and it could be forced to cease conducting certain aspects of its business with residents of certain jurisdictions, be forced to otherwise change its business practices in certain jurisdictions, or be required to obtain additional licenses or regulatory approvals.

Any failure of tZERO Crypto to comply with all applicable rules and regulations or satisfy state or federal regulatory authorities with which it must comply could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

tZERO or its technology may be the subject of cyber-attacks, which may result in security breaches and the loss or theft of assets, which could expose tZERO to liability and reputational harm and could seriously curtail the utilization of tZERO's services or technology and could result in claims against tZERO or us.

Certain of tZERO's businesses store and transmit user's proprietary information (or may do so in the future) and create technology, including the tZERO Technology Stack, which is involved in third-parties' storage and transmission of users' proprietary information. As a result, tZERO's businesses may be the subject of security breaches, computer malware and other computer hacking attacks which could expose it to a risk of loss or misuse of this information, and to resulting claims, fines, and litigation. tZERO has experienced cyberattacks and believes its systems are probed by potential hackers on a daily basis. tZERO expects the problem will continue to grow worse over time. Cyber-attacks may also target tZERO's customers or third-parties and other services on which tZERO or its customers depend on. In the event such cyber-attacks target customers utilizing tZERO's technology they may attempt to identify and exploit weaknesses in tZERO's technology to conduct a cyber-attack.

Security breaches and cyber-attacks are also of particular concern to businesses, like tZERO Crypto, that directly interact with cryptocurrencies. While tZERO Crypto wallet users hold their cryptocurrency directly on their mobile devices (as opposed to being held in custody by tZERO Crypto), tZERO Crypto holds a limited cryptocurrency inventory on hand to facilitate its exchange services and has access to customer information. As a result, tZERO Crypto is subject to an increased risk of cyber-attacks, which could result in loss of cryptocurrency, unauthorized access to customer information and the resulting legal or financial exposures or the unexpected unavailability of tZERO Crypto's services.

Any compromise of tZERO's security or that of a third-party involving tZERO's technology could result in a violation of applicable privacy and other laws, and cause significant financial loss, legal fines and other legal exposure, damage to tZERO's reputation, and a loss of confidence in the maturity of tZERO's security program and tZERO's ability to implement security measures on par with its peers; further, a compromise of tZERO's security could reduce market participants' willingness to adopt and regularly use its technology (including the tZERO Technology Stack), any of which could have a material adverse effect on tZERO and our financial position and business.

tZERO's core technology has been and will be, as applicable, developed by key technology employees of tZERO and its affiliates, and their operation and further development depend on the continued availability of those key employees.

The tZERO Technology Stack and other core technology used for tZERO's operations, have been or will be, as applicable, developed primarily by a small number of key technology employees of tZERO and its affiliates. This includes technology used for the operation of the regulated trading venues tZERO supports, including the tZERO ATS. The loss of the services of any of those key employees could have a material adverse effect on the ability of tZERO to develop, operate or maintain the tZERO Technology Stack or other technology used for tZERO's operations. If tZERO were to lose the services of any such key employees, it could be difficult or impossible to replace them, and the loss of any of them could have a material adverse effect on tZERO's operations and financial condition.

tZERO's success will be dependent on its ability to hire, retain or motivate qualified personnel.

tZERO's business largely depends on the talents and efforts of highly skilled individuals, particularly those with technology, operational and regulatory backgrounds. tZERO's future success will depend on its continuing ability to identify, hire, develop, motivate, and retain highly skilled personnel. Without such individuals, tZERO may not have or may not be able to obtain the skills or expertise needed to successfully develop, maintain and implement the tZERO Technology Stack or its other initiatives. In addition, its compensation arrangements, such as its equity award program, may not always be successful in attracting new employees and retaining and motivating its existing employees, which would affect its future success. Any failure by tZERO to hire, retain or motivate qualified personnel would materially adversely affect tZERO's business and us.

To date, SpeedRoute and tZERO ATS, LLC's revenues have come from a small number of major customers, making SpeedRoute and tZERO ATS, LLC, and by extension tZERO, vulnerable to changes in the business and financial condition of, or demand for SpeedRoute's and tZERO ATS, LLC's services by, such customers.

To date, the primary source of revenue for SpeedRoute and tZERO ATS, LLC has been two major customers, making SpeedRoute and tZERO ATS, LLC vulnerable to changes in the business and financial condition of, or demand for services by,

such customers. During the year ended December 31, 2019, revenue attributable to these two customers accounted for, respectively, 30% and 23% of SpeedRoute and tZERO ATS, LLC's combined revenue. Additionally, to date, SpeedRoute and tZERO ATS, LLC account for tZERO's primary sources of revenue, making tZERO vulnerable to any changes in the business and financial condition of, or demand for SpeedRoute and tZERO ATS, LLC's services by such customers as well. SpeedRoute, tZERO ATS, LLC and tZERO's income and ability to meet its financial obligations could also be adversely affected in the event of bankruptcy, insolvency or significant downturn in the business of one of these customers.

tZERO has chosen to temporarily postpone commercialization of the DLR Software, and if it does resume commercialization, it may never successfully launch, market, or sell its DLR Software.

tZERO has developed the DLR Software, which is intended to enable broker-dealer licensees with stock inventory to create a blockchain-based record of the shares that the licensee has made available for "locates" and of the daily purchases of the right to "locate" specifically identified shares for purposes of compliance with regulatory requirements. tZERO is temporarily postponing the further commercialization of the DLR Software as it focuses on other blockchain applications but may, in the future, resume commercialization thereof.

In the event tZERO were to recommence commercializing the DLR Software, its viability would be dependent on whether the DLR Software would be effective at satisfying regulatory obligations of those effecting short sales, which is currently uncertain. Confirming this regulatory compliance is the responsibility of broker-dealer licensees using the DLR Software, however, tZERO may be required to expend significant resources to assist licensees in doing so. Additionally, the existing system which the DLR Software is meant to replace is firmly entrenched and it would require the devotion of significant resources to persuade market participants to transition to the DLR Software. As a result, there can be no assurance that tZERO will choose to recommence commercialization of the DLR Software or that if it wishes to do so, that it will be successful in doing so, either due to the regulatory uncertainty relating to the DLR Software or due to a lack of sufficient resources available to tZERO at such time.

Strategic transactions tZERO has and may engage in could disrupt its business, divert its management's attention or harm its business.

From time to time tZERO has engaged in strategic transactions, including acquisitions, strategic investments and partnerships and divestitures, and may do so again in the future. Many of tZERO's businesses and the counterparties with which it may engage in transactions with are heavily regulated which may complexify such strategic transactions. The identification, evaluation, and negotiation of potential strategic transactions may divert the attention of management and require the incurrence of significant expenses, whether or not such transactions are ultimately completed. We also may not achieve the anticipated benefits from such transactions due to a number of factors, including difficulties resulting from the integration or separation of technologies, accounting or other operational systems, culture or personnel involved in any acquisition or divestment; diversion of management's attention; litigation; prioritization of resources; regulatory constraints or other disruptions to tZERO's operations. Also, the anticipated benefits of such strategic transactions may not materialize or increase tZERO's revenue. If any strategic transaction fails to meet tZERO's expectations, tZERO's business may be materially and adversely effected, which could have a material adverse effect on us.

Additional Risks Related to TZROP

The IRS may disagree with our characterization of the TZROP offering, which would have a material adverse effect on us.

Although we have taken the position that the sale of TZROP in the TZROP offering was a sale of equity for tax purposes, if the IRS disagrees with our characterization and instead requires us to treat the proceeds as income to us for federal income tax purposes, this would reduce our federal net operating loss carryforwards by approximately \$104.2 million as a result of the TZROP offering. In addition, if we are required to treat the proceeds of the security token offering as a liability rather than equity for accounting purposes, that would reduce tZERO's net book value compared to equity treatment, which might delay or prevent tZERO from declaring a dividend on the TZROP.

We are subject to the risks of holding TZROP and the risk that we will be unable to sell the TZROP.

As part of the TZROP offering, we elected to accept TZROP in payment of \$30 million of tZERO's indebtedness to us. As an affiliate of the issuer, we may only resell the TZROP we hold under certain circumstances, and are therefore subject to all of the risks of holding TZROP, including the risk that we will be unable to resell any TZROP. We do not have any contractual

rights to require tZERO or any third party to assist us in making such resales and as a result, expect to remain subject to the risks of holding TZROP for the foreseeable future.

TZROP may be subject to registration under the Exchange Act if tZERO has assets above \$10 million and more than a statutory number of registered token holders, which would increase tZERO's costs significantly and require substantial attention from tZERO's management.

Companies with total assets above \$10 million and more than 2,000 holders of record of their equity securities, or 500 holders of record of its equity securities who are not accredited investors, at the end of their fiscal year must register the subject class of equity securities with the SEC under the Exchange Act. If tZERO is required to register TZROP with the SEC under the Exchange Act, it would be a laborious and expensive process and require a substantial portion of tZERO management's attention. Furthermore, if such registration takes place, tZERO would be subject to ongoing public reporting requirements and require additional accounting, tax, compliance, documentation, risk management and internal control procedures, necessitating the need for tZERO to hire additional personnel to implement, perform and/or monitor such procedures and creating materially higher compliance and reporting costs going forward.

Risks Related to the Development of Digital Securities and the tZERO Technology Stack

Applicable law and regulation may limit the extent to which blockchain technology may be used to enhance securities in the future, limiting tZERO's business.

The complex legal and regulatory requirements applicable to issuers and SEC-registered exchanges, alternative trading systems or other regulated venues and market participants currently limits the extent to which tZERO is able to further enhance securities using blockchain technology. For instance, regulators have emphasized the legal complexity raised by custodying securities on the blockchain and that it may not currently be regulatorily permissible in certain circumstances, regardless of whether tZERO is able to provide technology for this purpose. The ability of tZERO to provide additional applications of blockchain technology to digital securities or the financial industry more broadly may be dependent on legislators or regulatory authorities adopting additional rules and regulations or modifying existing rules and regulations, or interpretations thereof, which may take significant time to occur and would be largely outside of tZERO's control. There can be no assurance that digital securities or any future legally and regulatorily compliant advancement thereof which tZERO may be able to develop will meet investor expectations—for example, there can be no assurance that it will enable less expensive or more efficient trading than is possible from other available trading solutions, whether traditional or otherwise.

The current user experience for digital securities, like TZROP and others traded on the tZERO ATS, is not analogous to one involving a virtual currency or any other anonymous bearer digital instrument that trades peer-to-peer on a distributed ledger because distributed ledger technology does not play a role in the sale, issuance, transfer or custody of digital securities. However, in the future regulatory authorities may take the position that the existing regulatory framework precludes the enhancement of digital securities with a digital "courtesy carbon copy". As a result, legal and regulatory developments could render the issuance and trading of digital securities impermissible or change the manner in which digital securities are permitted to be enhanced by blockchain technology.

Any such regulatory issues may limit the commercial viability of tZERO's business, which would have a material adverse impact on tZERO's business and could have a material adverse effect on us.

Regulatory authorities may never permit the trading of certain digital securities or involvement by market participants in their trading or require changes to permit such trading to occur, limiting tZERO's businesses.

Depending on the particular digital security and regulated trading venues on which a security would trade, numerous regulatory authorities, including FINRA and the SEC, may need to be consulted or provide their consent before any trading could occur. Any such regulatory authorities could prevent such trading from ever occurring if they objected to aspects of the anticipated method in which such trading would occur, including how the tZERO Technology Stack would be used and whether such regulated trading venues are permitted to trade digital securities. Applicable legal or regulatory requirements or authorities may also require changes to the manner in which such trading might occur before to permitting it to occur, which may require tZERO to make changes to the underlying technology for specific licensees or more broadly before trading may begin. The regulatory landscape that potential issuers and tZERO ATS and other regulated market participants involved in the trading of digital securities and their partners, need to navigate in order to successfully permit a digital security to begin trading is complex, and there can be no assurance that they will successfully do so. Assisting partners in addressing such considerations may require significant time and resources from tZERO both in navigating any legal and regulatory concerns or adapting the tZERO Technology Stack in a way that realizes the requirements of the particular digital security or regulated market participant.

Any such regulatory issues may limit the commercial viability of tZERO's business, including the tZERO Technology Stack and regulated trading venues trading digital securities which tZERO has an interest in or its subsidiaries operate, which would have a material adverse impact on tZERO's business and could have a material adverse effect on us.

Digital securities may not be widely adopted and may have limited users.

It is possible that digital securities will not be used by a large number of issuers or investors or tradeable on many regulated trading venues (or venues with sufficient market participants) or that there will be limited public interest in the continued creation and development of digital securities. Additionally, it is possible that other technology for the trading of securities which may or may not utilize blockchain technology will be developed or receive greater public interest, competing with or limiting demand for digital securities. Such a lack of use or interest could negatively impact the continued development and commercialization of the tZERO Technology Stack and the growth of the tZERO ATS trading ecosystem and have a material adverse effect on the business and financial position of tZERO and have a material adverse effect on us.

Some market participants may oppose the development of blockchain-based systems like those central to tZERO's commercial mission, which could adversely affect tZERO.

Many participants in the system currently used for trading public securities in the United States may oppose the development of capital markets systems and processes that involve the use of blockchain technology, whether by permitting trading to occur directly on the blockchain or by adding digital courtesy carbon copies such as those used by digital securities. The market participants who may oppose such a system may include entities with significantly greater resources, including financial resources and political influence, than tZERO or we have. The ability of tZERO to operate and achieve its commercial goals could be adversely affected by any actions of any such market participants that result in additional regulatory requirements or other activities that make it more difficult for tZERO to operate could adversely affect tZERO's ability to achieve its commercial goals, which could have a material adverse effect on us.

Risks Related to Blockchain Technology and the Blockchain Industry

The application of blockchain technologies to existing legal and regulatory regimes is uncertain, and new laws and regulations or policies may materially adversely affect tZERO's business.

Certain of tZERO's businesses transact directly in peer-to-peer digital assets while others intend to advance existing industries by promoting the integration of blockchain technologies, either by creating technology to enable or investing in regulated venues to enable the issuance, trading, clearance and settlement of digital securities. The application of blockchain technologies to the legal and regulatory regimes applicable to these businesses, many of which were developed for earlier technologies, is often unclear and varies significantly among international, federal, state and local jurisdiction. Such legal and regulatory regimes are also likely to rapidly evolve as legislators and regulatory authorities take greater interest in blockchain technology.

Various legislative and executive bodies in the United States and in other countries may in the future adopt laws, regulations, or guidance, or take other actions, which may severely impact the adoption of blockchain technologies. Additionally, in the future, tZERO expects to evolve its focus towards the advancement of financial industry through the

integration of blockchain technology in new ways which may present novel questions of legal and regulatory interpretation. Failure by tZERO, its subsidiaries or any of their partners (including issuers of digital securities or market participants utilizing the tZERO Technology Stack) to comply with any laws, rules and regulations applicable to them, some of which may not exist yet or are subject to interpretation and may be subject to change, could result in a variety of adverse consequences, including civil penalties and fines, the need to implement product changes, or an increase in costs related to compliance or operational changes and reputational harm, any of which could have a substantial and materially adverse effect to tZERO's business and us.

The further development and acceptance of blockchain technologies, which are part of a new and rapidly changing industry, are subject to a variety of factors that are difficult to evaluate. The slowing or stopping of the development or acceptance of blockchain technologies, peer-to-peer digital assets and assets enhanced by blockchain technologies would have a material adverse effect on tZERO's business plans and could have a material adverse effect on us.

The growth of blockchain technology and the blockchain industry in general, as well as the specific blockchain networks which peer-to-peer digital assets such as cryptocurrencies and assets enhanced by blockchain technology, including digital securities such as TZROP, utilize, is subject to a high degree of uncertainty. The factors affecting the further development and acceptance of blockchain technology and the growth of the blockchain industry include, without limitation:

- worldwide growth in the adoption and use of peer-to-peer digital assets, assets enhanced by blockchain technology and other blockchain technologies;
- government and quasi-government regulation of peer-to-peer digital assets and assets enhanced by blockchain technology and their use, or restrictions on or regulation of access to and operation of blockchain networks or similar systems;
- the maintenance and development of the open-source software protocol of blockchain networks;
- changes in consumer demographics and public tastes and preferences;
- the availability and popularity of other forms or methods of buying and selling goods and services, or trading assets including new means of using government-backed currencies or existing networks;
- exploitable flaws inherent in blockchain technology (e.g. "double-spend" attacks or "51%" attacks);
- general economic conditions affecting investment in and demand for peer-to-peer digital assets and assets enhanced by blockchain technology; and
- a decline in the popularity or acceptance of peer-to-peer digital assets and assets enhanced by blockchain technology.

The blockchain industry as a whole has been characterized by rapid changes and innovations and are constantly evolving. Although it has experienced significant growth in recent years, the slowing or stopping of the development, general acceptance and adoption and usage of blockchain networks, peer-to-peer digital assets such as cryptocurrencies and assets enhanced by blockchain technology such as digital securities may materially adversely affect tZERO's business plans.

The prices of peer-to-peer digital assets and digital securities have historically been extremely volatile. Fluctuations in the price of individual assets could affect market perception of blockchain technology and thereby materially and adversely affect tZERO's business.

The prices of peer-to-peer digital assets, such as Bitcoin and Ether, and digital securities, including TZROP, have historically been subject to dramatic price fluctuations and are highly volatile. A fluctuation in the price of a single peer-to-peer digital asset or digital security may cause volatility in the value of such assets generally or a subset thereof. For example, a security breach that affects confidence and causes price fluctuations in Bitcoin or Ether may affect market perception of blockchain technology and may discourage potential investors from investing in or utilizing all peer-to-peer digital assets. Even though digital securities are conventional, uncertificated book-entry securities, investors may perceive them to be part of the same asset class as peer-to-peer digital assets due to their enhancement with a digital "courtesy carbon copy" of the transfer agent's share registry, and the price volatility of peer-to-peer digital assets may thereby affect investor perception of and demand for digital securities. This volatility may adversely affect interest in and demand for cryptocurrencies, such as those tZERO Crypto provides wallet and exchange services for, or digital securities which the tZERO Technology Stack is meant to enable and which trade on regulated venues tZERO invests in, each of which would materially adversely affect tZERO's business and us.

Additionally, tZERO Crypto holds a limited amount of cryptocurrency in an inventory to facilitate purchases and sales of cryptocurrency with its customers which have historically been subject to dramatic fluctuations and are highly volatile. This may subject tZERO Crypto to cryptocurrency price volatility risk which may materially adversely affect its financial condition.

Additional Risks Relating to our Retail Business

Our business depends on the Internet, our infrastructure and transaction-processing systems.

We are completely dependent on our infrastructure and on the availability, reliability and security of the Internet and related systems. A substantial amount of our computer and communications hardware is located at a single Overstock owned and operated facility. Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber-attacks, acts of war, break-ins, earthquake and similar events. Our back-up facility is not adequate to support sales at a high level. Our servers and applications are vulnerable to malware, physical or electronic break-ins and other disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. Any system interruption that results in the unavailability of our Website or our mobile app or reduced performance of our transaction systems could interrupt or substantially reduce our ability to conduct our business. We have experienced periodic systems interruptions due to server failure, application failure, power failure and intentional cyber-attacks in the past, and may experience additional interruptions or failures in the future. Any failure or impairment of our infrastructure or of the availability of the Internet or related systems could have a material adverse effect on our financial results, business and prospects. In addition, the occurrence of any event that would adversely affect e-commerce or discourage or prevent consumers from shopping online or via mobile apps could significantly decrease the volume of our retail sales.

We rely upon paid and unpaid natural search engines to rank our product offerings, and our financial results may suffer if we are unable to regain our prior rankings in natural searches.

We rely on paid and unpaid natural search engines to attract consumer interest in our product offerings, including Google, Bing, and Yahoo!. Changes to their ranking algorithms may further adversely affect our product offerings in paid and/or unpaid searches, and we may at times be subject to ranking penalties if the operators of search engines believe we are not in compliance with their guidelines. Search engine companies change their natural search engine algorithms periodically, and our ranking in natural searches may be adversely affected by those changes, as has occurred from time to time, and which have led us to pursue revenue growth in other more expensive marketing channels. Google's search engine is dominant in our business and has historically been a significant source of traffic to our website, much of it at essentially no incremental cost to us. Search engine companies may also determine that we are not in compliance with their guidelines from time to time, as has occurred in the past, and they may penalize us in their search algorithms as a result. In recent years, we have experienced declines in our rankings in Google's natural search engine, which has required us to utilize more expensive marketing channels or otherwise compensate for the loss of some of the natural search traffic. Any future declines in our rankings in Google's natural search engine could have a material adverse effect on our business.

Our business depends on effective marketing, including marketing via email and social networking messaging and our competitors have and may continue to directly increase our marketing costs and also have and may continue to cause us to decrease certain types of marketing.

We depend on effective marketing and high customer traffic. We depend on email to promote our site and offerings and to generate a substantial portion of our revenue. If a significant portion of our target customers no longer utilize email, or if we are unable to effectively and economically deliver email to our potential customers, whether for legal, regulatory or other reasons, it would have a material adverse effect on our business. We also rely on social networking messaging services for marketing purposes, and anything that limits our ability or our customers' ability or desire to utilize social networking services could have a material adverse effect on our business. In addition to competing with us for customers, suppliers, and employees, our competitors have and may continue to directly increase our operating costs, by driving up the cost of various forms of online advertising. We may elect to decrease our use of sponsored search or other forms of marketing from time to time in order to decrease our costs, which may have a material adverse effect on our financial results and business. We may also elect to spend additional amounts on sponsored search or other forms of marketing from time to time in order to increase traffic to our Website, or to take other actions to increase traffic and/or conversion. If we are unable to develop, improve, implement and maintain effective and efficient cost-effective advertising and marketing programs, it would have a material adverse effect on our financial results and business.

We are subject to cyber security risks and risks of data loss or other security breaches.

Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, and to resulting claims, fines, and litigation. We have been subjected to a variety of cyber-attacks, which have increased in number and variety over time. We believe our systems are probed by potential hackers virtually 24/7, and we expect the problem will continue to grow worse over time. Cyber-attacks may target us,

our customers, our suppliers, banks, credit card processors, delivery services, e-commerce in general or the communication infrastructure on which we depend. Any compromise of our security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, any of which could have a material adverse effect on our financial results and business. Moreover, any insurance coverage we may carry may be inadequate to cover the expenses and other potential financial exposure we could face as a result of a cyber-attack or data breach.

We face intense competition and may not be able to compete successfully against existing or future competitors.

The online retail market is evolving rapidly and intensely competitive. Barriers to entry are minimal, and current and new competitors can launch new websites at a relatively low cost. We currently compete with numerous competitors, including:

- online retailers with or without discount departments, including Amazon.com, AliExpress (part of the Alibaba Group), eBay, and Rakuten.com (formerly Buy.com);
- online shopping services, including Google Express;
- online specialty retailers such as Blue Nile, Bluefly, Houzz, Jet.com, Wayfair, Zappos.com, and Zulily;
- furniture specialists including Ashley Furniture, Bob's Discount Furniture, Havertys, Raymour & Flanigan and Rooms To Go;
- traditional general merchandise and specialty retailers and liquidators including Barnes and Noble, Bed, Bath & Beyond, Best Buy, Costco, Crate and Barrel, Ethan Allen, Gilt, Home Depot, HomeGoods, Hudson's Bay Company, IKEA, J.C. Penney Company, Kirkland's, Kohl's, Lands' End, Lowe's, Macy's, Nordstrom, Pier 1 Imports, Pottery Barn, Restoration Hardware, Ross Stores, Saks Fifth Avenue, Sears, T.J. Maxx, Target, Wal-Mart, and Williams-Sonoma, all of which also have an online presence; and
- online liquidators such as SmartBargains.

We expect that existing and future traditional manufacturers and retailers will continue to add or improve their e-commerce offerings, and that our existing and future e-commerce competitors, including Amazon, will continue to increase their offerings, their delivery capabilities, and the ways in which they enable shoppers to purchase goods, including their mobile technology and the voice-activated shopping services offered by Amazon. Further, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular, and we may not be able to place our products on these sites to take advantage of their internal search platforms and some shoppers may begin their searches at these websites rather than utilize traditional search engines at all. Many of our competitors specialize in one or more of the areas in which we offer products. For example, our furniture offerings compete with more than 100 online retail furniture websites, in addition to many more traditional furniture retail specialists. Some of our competitors run at net losses to gain market share in the online retail market. We also face competition from shopping services such as Google Express, which offers products from Walmart, Costco, Target and other retailers on a voice-activated shopping platform. Competition from Amazon and from other competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition, greater access to capital and significantly greater financial, marketing and other resources than we do, affect us and have had and could continue to have a material adverse effect on our financial results, business and prospects.

Tariffs, the spread of illness, or other measures or events that increase the effective price of products or limit our ability to access products we or our suppliers or fulfillment partners import into the United States could have a material adverse effect on our business.

We and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China and other countries. The United States imposed tariffs on goods from China in 2019 which adversely impacted our revenues. Further, the spread of the COVID-19 virus (also known as coronavirus) has been declared a "pandemic" by the World Health Organization. If the United States imposes additional tariffs, or if a disease or illness such as COVID-19 spreads and such measures or events directly or indirectly increase the price of imported products sold on our Website, or limit our ability to access products sold on our Website, the increased prices and/or supply chain challenges could have a material adverse effect on our financial results, business and prospects. Further, the broader global effects of potentially reduced consumer confidence and spending related to COVID-19 could also have a negative effect on our overall business. At this point, the extent to which COVID-19 may impact our business is uncertain.

The spread of the COVID-19 could negatively impact our operations.

We have facilities located in Washington, New York, Pennsylvania, Missouri, Utah, and Ireland, and the employees working in those facilities may be at greater risk for exposure to and for contracting COVID-19. The U.S. Center for Disease Control, or the CDC, has reported known cases of COVID-19 in these states and country. The spread of COVID-19 in these locations may result in our employees being forced to work from home or missing work if they or a member of their family contract COVID-19. At this point, the extent to which COVID-19 may impact our business is uncertain.

Economic factors, including our increasing exposure to the U.S. housing industry and the potential for a decrease in consumer spending, could adversely affect us.

Economic conditions, particularly any weakness in the United States housing market, may adversely affect our financial performance. Over the last several years, the percentage of our sales from home and garden products has increased substantially. We believe that our sales of home and garden products are affected by the strength of the U.S. housing industry, and that downturns in the U.S. housing industry could have a material adverse effect on our financial results, business and prospects. Similarly, a substantial portion of the products and services we offer are products or services that consumers may view as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macro-economic conditions that impact consumer spending, including discretionary spending. Difficult macro-economic conditions, particularly high levels of unemployment or underemployment, also impact our customers' ability to obtain consumer credit. Other factors, including consumer confidence, employment levels, interest rates, tax rates, consumer debt levels, and fuel and energy costs could reduce consumer spending or change consumer purchasing habits. Slowdowns in the U.S. or global economy, or an uncertain economic outlook, could materially adversely affect consumer spending habits and could have a material adverse effect on our financial results, business and prospects.

If we do not successfully optimize and operate our warehouse, distribution centers and customer service operations, our business could be harmed.

We have expanded, contracted and otherwise modified our warehouse, distribution centers and customer service operations from time to time in the past, and expect that we will continue to do so. If we do not successfully optimize and operate our warehouse, distribution centers and customer service operations, it could significantly limit our ability to meet customer demand, customer shipping or return time expectations, or result in excessive costs and expenses for the size of our business. Because it is difficult to predict demand, we may not be able to manage our facilities in an optimal way, which may result in excess or insufficient inventory or warehousing capacity. We may also fail to staff our fulfillment and customer service centers at optimal levels. Our failure to manage our warehouse operations, distribution centers or our fulfillment and customer service centers optimally could adversely affect our financial results and customer experience and could have a material adverse effect on our financial results, business and prospects.

We depend on third-party companies to perform functions critical to our business, and any failure on their part could have a material adverse effect on our business.

We depend on third-party companies, including a large number of independent fulfillment partners whose products we offer for sale on our Website, to perform functions critical to our ability to deliver products and services to our customers. We depend on our fulfillment partners to perform traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers and delivering purchased merchandise on a timely basis. We also depend on the delivery services that we and they utilize, on the payment processors that facilitate our customers' payments for their purchases, and on other third parties over which we have no control, for the operation of our business. Difficulties with any of our significant fulfillment partners, delivery services, payment processors or other third parties involved in our business, regardless of the reason, could have a material adverse effect on our financial results, business and prospects.

We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, and for proper labelling of products.

We rely on our suppliers' and fulfillment partners' representations of product safety, content and quality. We also rely on our suppliers and partners to ensure proper labelling of products. Issues or concerns regarding product safety, labelling, content or quality could result in consumer or governmental claims and could adversely affect our financial results and business. Any indemnity agreement we may have with a supplier or partner of a product may be inadequate or inapplicable, and any insurance coverage we may carry may be inadequate. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business and prospects.

Our decision to accept and hold cryptocurrency, such as bitcoin, may subject us to exchange risk and additional tax and regulatory requirements.

In 2014, we began accepting bitcoin as a form of payment for purchases on our website. Neither bitcoin nor any of the other cryptocurrencies we may hold are considered legal tender or backed by any government, and bitcoin and other cryptocurrencies we may hold have experienced price volatility, technological glitches and various law enforcement and regulatory interventions. The use of cryptocurrency such as bitcoin has been prohibited or effectively prohibited in some countries. If we fail to comply with regulations or prohibitions applicable to us, we could face regulatory or other enforcement actions and potential fines and other consequences. Our Board of Directors has authorized us to retain, in bitcoin, up to 50% of our sales revenues paid for by customers in bitcoin. From time to time we hold bitcoin and other cryptocurrencies directly, and we have exchange rate risk on the amounts we hold as well as the risks that regulatory or other developments may adversely affect the value of the cryptocurrencies we hold. We may choose not to hedge or may be unable to fully hedge our exposure to cryptocurrencies and may at times be unable to convert cryptocurrencies to U.S. dollars. If any regulatory authority asserts that we require a license or other regulatory approval to conduct business or own an interest in other businesses involving cryptocurrencies, it could have a material adverse effect on our financial results and business.

Our insurance coverage and indemnity rights may not adequately protect us against loss.

The types, coverage, or the amounts of any insurance coverage we may carry from time to time may not be adequate to compensate us for any losses we may actually incur in the operation of our business. Further, any insurance we may desire to purchase may not be available to us on terms we find acceptable or at all. We are not indemnified by all of our suppliers, and any indemnification rights we may have may not be enforceable or adequate to cover actual losses we may incur as a result of our sales of their products. Actual losses for which we are not insured or indemnified, or which exceed our insurance coverage or the capacity of our indemnitors or our ability to enforce our indemnity agreements, could have a material adverse effect on our financial results, business and prospects.

We are partially self-insured with respect to our employees' health insurance. If the actual costs of these claims exceed the amounts we have accrued for them, we would incur additional expense.

Beginning January 1, 2017, we are partially self-insured with respect to our employees' health insurance, except to the extent of stop-loss coverage that limits our losses both on a per employee basis and an aggregate basis. The actual costs of our employees' health insurance claims could exceed our estimates of those costs for a number of reasons, including more claims or larger claims than we expect, and increases in the costs of healthcare generally. If the actual cost of our employees' health insurance claims and related expenses exceeds the amounts we have accrued, we may be required to record additional charges for these claims and/or to establish additional cash reserves, which could have a material adverse effect on our financial results, business and prospects.

Additional Risks Relating to our Medici Business

Certain equity financings completed by some of our subsidiaries could result in the acceleration of the vesting of outstanding equity awards granted by such subsidiaries.

Pursuant to equity incentive plans entered into by our subsidiaries, Medici Ventures, tZERO and Medici Land Governance, upon a "change in control" (as defined in the plans), outstanding equity awards that were issued under such plans would be subject to acceleration, vesting, and/or the lapsing of applicable restrictions on such awards. For purposes of the relevant tZERO plan, a "change in control" includes Overstock and any entity or entities directly or indirectly controlled by Overstock ceasing to be the legal or beneficial owner of a majority of the total voting power of the outstanding stock of tZERO. As a result, a sale of a number of shares by tZERO that would result in Overstock owning less than a majority of the total voting of the outstanding stock of tZERO would result in the acceleration of the vesting of the awards granted by tZERO. Further, the exercise of a sufficient number of outstanding equity awards issued under such plans could constitute a "change of control" as defined in such plan and thereby cause the accelerated vesting of unvested awards.

Our subsidiary Medici Land Governance, Inc. is a public benefit corporation.

Our subsidiary Medici Ventures has formed Medici Land Governance, Inc. ("MLG") as a public benefit corporation under Delaware law. Directors of traditional corporations, including Overstock and Medici Ventures, are required to make decisions they believe to be in the best interests of their stockholders. The directors of MLG are required by Delaware law to manage MLG in a manner that balances (1) MLG stockholders' pecuniary interests, (2) the best interests of those materially

affected by MLG conduct, and (3) MLG public benefit purpose, which is to promote full financial inclusion, economic advancement, and enfranchisement of individuals, by creating systems using blockchain and other technologies that help individuals prove rightful ownership of assets, capitalize their assets, and establish a formal identity. As a result, MLG may not have the same focus on increasing stockholder value that Overstock and Medici Ventures have, and the duties of the officers and directors of MLG, some of whom also are or will be officers and/or directors of Overstock and/or Medici Ventures, may conflict with the duties of the officers and directors of Medici Ventures and Overstock. Even in the absence of common directors, conflicts of interest may arise.

Subsidiaries of Medici Ventures, including Medici Land Governance, have emerging business models, without profits, and may require additional capital.

Subsidiaries of Medici Ventures, including MLG, are in the early stages of their business and do not generate profits. Many of MLG's current projects are being done as pilot projects without charge, at MLG's expense, to demonstrate MLG's capabilities and develop its reputation. Although MLG intends to generate profits in the future, it has not done so to date. If subsidiaries of Medici Ventures, including MLG, cannot generate profits, such subsidiaries might require additional capital, which could have a material adverse effect on our financial results, business and prospects.

The businesses that we are pursuing through our Medici Ventures initiatives are novel and subject to technical, operational, financial, regulatory, legal, reputational and marketing risks.

Medici Ventures has acquired interests in various businesses, including financial technology companies, broker-dealers, and digital currency transfer and payment businesses. We have limited experience with the operation of such businesses. Virtually every state in the U.S. regulates money transmitters and money service businesses. In some states the licensing requirements and regulations expressly cover companies engaged in digital currency activities; in other states it is not clear whether or how the existing laws and regulations apply to digital currency activities. Further, U.S. federal law requires registration of most such businesses with FinCEN. These licenses and registrations subject companies to various anti-money laundering, know-your-customer, record-keeping, reporting and capital and bonding requirements, limitations on the investment of customer funds, and inspection by state and federal regulatory agencies. Under U.S. federal law, it is a crime for a person, entity or business that is required to be registered with FinCEN or licensed in any state to fail to do so. Further, under U.S. federal law, anyone who owns all or part of an unlicensed money transmitting business may be subject to civil and criminal penalties. For example, if Bitt, Spera, Ripio, or FinClusive take any action that could subject them to registration with FinCEN or to licensing requirements in any state before they become properly licensed and registered, we could be subject to potential civil and criminal penalties. In addition, our majority-owned subsidiary tZERO is working on financial applications of blockchain technology, including the development and management of a trading platform for digital "tokens," "coins," and digital securities. See "Additional Risks Relating to our tZERO Initiatives" below. These areas, along with other areas, are areas in which we do not have substantial experience, and which are subject to the risks of new and novel businesses, including technical, operational, financial, regulatory, legal and reputational risks, as well as the risk that we may be unable to market, license or sell our technology successfully or profitably. The occurrence of any such risks, any such penalties, or even allegations of criminal or civil misconduct, could have a material adverse effect on us and on our financial results and business.

We may be required to write off amounts relating to our interests in startup businesses.

At December 31, 2019, Overstock and its subsidiaries held minority interests totaling approximately \$52.4 million in several companies that are in the startup or development stages and we may acquire additional minority interests in other entities in the future. Minority interests are inherently risky because we may not have the ability to influence business decisions. Further, these interests are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize. Additionally, since these interests are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. Furthermore, we have no assurance that the technology or products of companies we have funded would be successful, even if they were brought to market. We have written off amounts related to these interests in the past and may in the future write off additional amounts related to these interests. Any such write-offs could be material and could have a material adverse effect on our financial results and business.

If we do not keep pace with technological and regulatory changes, it may impair our ability to market, license or sell the products and services developed as part of our Medici initiatives.

The market for products and services based on blockchain technology is characterized by rapid technological change, frequent product and service innovation and evolving industry standards. The success of our Medici initiatives depends on several factors, including the timely completion, introduction and market acceptance of such products and services, as well as

our ability to comply with changing regulations and laws. Failure in this regard may significantly impair our competitiveness and financial results. In addition, we may need to continuously modify and enhance our offerings to keep pace with changes in Internet-related hardware, software, communication, browser and database technologies. We may not be successful in either developing these modifications and enhancements or in bringing them to market in a timely fashion. Furthermore, uncertainties about the timing and nature of new network platforms or technologies, or modifications to existing platforms or technologies, could increase our research and development expenses. Any failure of products and services to keep pace with technological or regulatory changes or operate effectively with future network platforms and technologies could reduce the demand for our products and services. The occurrence of any of the foregoing could have a material adverse effect on our financial results and business.

The blockchain related products and services that we are developing as part of our Medici initiatives have the potential to be used in ways we do not intend, including for criminal or other illegal activities.

Blockchain related products and services, in particular cryptocurrencies, have the potential to be used for financial crimes or other illegal activities. Because the Medici initiatives are novel there are uncertainties regarding any legal and regulatory requirements for preventing blockchain related products and services from being put to such uses, and there are uncertainties regarding the liabilities and risks to the Company if we are unable to prevent such uses. Even if we comply with all laws and regulations regarding financial and blockchain related products and services, we have no ability to ensure that our customers, partners or others to whom we license or sell our products and services comply with all laws and regulations applicable to them and their transactions. Any negative publicity we receive regarding any allegations of unlawful uses of our Medici initiatives could damage our reputation. More generally, any negative publicity regarding unlawful uses of blockchain technology in the marketplace could reduce the demand for our products and services. The occurrence of any of the foregoing could have a material adverse effect on our financial results and business.

Risks Relating to Our Common Stock and Other Securities

The trading prices of our securities may be adversely affected by short-selling activities involving our common stock.

The trading prices of our common stock and other securities have been and may continue to be volatile. Our stock price fluctuations may be due in part to short-selling activity related to our common stock. The practice of short-selling activity may adversely affect our common stock price, which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects.

The trading prices of our securities may be adversely affected by the pursuit of our strategic initiatives.

The trading prices of our common stock and other securities have been and may continue to be volatile. Our stock price fluctuations may be due in part to our disclosures about our exploration of strategic initiatives. Our stock price may be adversely affected by our future actions, including any decisions we may make or announcements to pursue or not to pursue such strategic initiatives, and by any announcements we may make regarding any such matters, any of which could cause the trading prices of our securities to decrease significantly which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects.

The trading prices of our securities may be affected by the prices of cryptocurrencies, particularly Bitcoin, despite our disclosures that we generally hold very little Bitcoin, and by perceptions regarding the business prospects of blockchain technology generally.

The trading prices of our securities may be affected by the prices of cryptocurrencies, particularly Bitcoin, which may be the result of an apparent misperception that the value of our business is related to the value of Bitcoin, despite our disclosures that we generally hold very little Bitcoin. The market price of our securities may also be affected by perceptions regarding the business prospects of our Medici business and blockchain technology generally. To the extent that our blockchain initiatives do not succeed in a timely manner or at all, or the development or acceptance of blockchain networks, blockchain assets or blockchain applications slows or stops, the trading prices of our securities could decrease significantly, which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects.

Sales by our significant stockholders could have an adverse effect on the market price of our common and preferred stock or subject us to limitations on our ability to use our net operating and tax credit carryforwards.

A small number of our stockholders own a significant percentage of our common stock. In the past, our former executive officer and director Dr. Patrick Byrne owned a significant amount of our common stock that he sold in September of 2019, and which sale had an adverse effect on the market price of our common stock and increased the risk that we may trigger a limitation on our ability to use our net operating loss and tax credit carryforwards in the future. According to public filings with the SEC, at December 31, 2019, a small number of institutional investors were beneficial owners of significant percentages of our common stock. Sales by any of such stockholders could have a material adverse effect on the market prices of our common stock and/or preferred stock. In addition, the transfer of ownership of a significant portion of our outstanding shares of common or preferred stock in the public market or otherwise, by us or by a significant stockholder, within a three-year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income. Any of the foregoing could have a material adverse effect on the holders of our securities.

Our quarterly operating results are volatile and may adversely affect the market prices of our common stock and preferred stock, and you may lose all or a part of your investment.

We have experienced and expect to continue to experience significant fluctuations in our operating results in part because of seasonal fluctuations in traditional retail patterns. Our gross revenues have historically been significantly lower in the first and second calendar quarters than in the fourth quarter of the prior year due primarily to increased shopping activity during the fourth quarter holiday season. Further, we generally increase our inventories substantially in anticipation of holiday season shopping activity, which has a negative effect on our cash flow. As a result of the fourth quarter holiday season shopping, we also typically have unusually large payments due to our fulfillment partners in the first calendar quarter. Our revenues and operating results have varied in the past and may continue to vary significantly from quarter to quarter due to a number of other factors, many of which are outside our control. In addition to seasonal effects and the other risk factors described in this report, factors that have caused and/or could cause our quarterly operating results to fluctuate and in turn affect the market prices of our common stock and preferred stock include:

- increases in the cost of advertising and changes in our sales and marketing expenditures;
- expenses we incur in our Medici and tZERO business development efforts;
- our inability to retain existing customers or encourage repeat purchases;
- the extent to which our existing and future marketing campaigns are successful;
- price competition, particularly in the costs of marketing as well as in product pricing;
- the amount and timing of operating costs and capital expenditures;
- the amount and timing of our purchases of inventory;
- our inability to manage distribution operations or provide adequate levels of customer service;
- increases in the cost of fuel, transportation or distribution;
- our inability to implement technology changes or integrate operations and technologies from acquisitions or other business combinations;
- our efforts to offer new lines of products and services; and
- our inability to attract users to our website.

Any of the foregoing could have a material adverse effect on our financial results and business and our ability to raise capital and could have a material adverse effect on the holders of our common stock and of our preferred stock.

Our outstanding preferred stock could adversely affect the holders of our common stock in some circumstances.

We have two series of preferred stock outstanding. The preferred stock could adversely affect the holders of our common stock in some circumstances. The preferred stock generally votes with the common stock, with holders of the preferred stock having one vote for each share held. As of December 31, 2019, the 481,259 outstanding shares of preferred stock constituted approximately 1.2% of the total number of shares of the preferred stock and the common stock, taken together. Holders of the Series A-1 Preferred stock are entitled to an annual cash dividend of \$0.16 per share, and holders of the Series B Preferred stock are entitled to an annual cash dividend at the annual rate of 1.0% multiplied by \$15.68, in each case in preference to any dividend payment to the holders of the common stock, out of funds legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of our preferred stock are also generally entitled to participate in any dividends we pay on the common stock. The preferred stock ranks equally with the common stock upon our liquidation, winding up or dissolution, with each share of Series A-1 Preferred stock and each share of Series B Preferred stock being treated as though it were a share of our common stock. Generally, in a business combination, we are obliged to use all commercially reasonable efforts to cause each share of the preferred stock to be treated as a share of common stock. Any of the foregoing could have a material adverse effect on the holders of the common stock in connection with any such transactions.

We generally have not received significant coverage by securities analysts, and the lack of coverage may adversely affect our share price and trading volume.

We generally have not received significant coverage by securities analysts, and the securities analysts who do cover us may stop coverage at any time. The lack of coverage may adversely affect our share price and trading volume and may cause our share price or trading volume to be lower than they might be if more analysts covered us.

Anti-takeover provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could impair a takeover attempt.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions which could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our Board of Directors. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws include provisions:

- limiting the liability of, and providing indemnification to, our directors and officers;
- limiting the ability of our stockholders to call and bring business before special meetings;
- providing that our Board of Directors is classified into three classes of directors with staggered three-year terms;
- only permitting the Board of Directors to fix the number of directors and to fill vacancies;
- prohibiting cumulative voting in the election of directors;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our Board of Directors;
- controlling the procedures for the conduct and scheduling of Board of Directors and stockholder meetings; and
- designating a state court located in the State of Delaware as the sole and exclusive forum for specified matters.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents certain stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of at least two-thirds of our outstanding common stock not held by such 15% or greater stockholder.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock or other securities and could also affect the price that some investors are willing to pay for our common stock or other securities.

Additional Risks Related Primarily to our Series A-1 Preferred Stock

Our Series A-1 Preferred stock may only be sold through the tZERO ATS.

The amended and restated certificate of designation for the Series A-1 Preferred stock provides that shares of the Series A-1 Preferred stock can be sold only on the tZERO ATS. The Series A-1 Preferred stock is not and will not be listed on any national securities exchange or other trading market of any kind. The limitation on trading shares of Series A-1 Preferred stock through the tZERO ATS may adversely affect the liquidity for, and market price of, the shares of Series A-1 Preferred stock. It may at times be very difficult to sell any shares of the Series A-1 Preferred stock.

The Series A-1 Preferred stock may only be sold through a brokerage account established with a broker-dealer that subscribes to and effects trading on the tZERO ATS. Currently, Dinosaur is the only broker-dealer that facilitates trades of any security on the tZERO ATS. Unless and until another broker-dealer effects trading on the tZERO ATS or maintains an account with an ATS-executing broker-dealer, any holder of Series A-1 Preferred stock that wishes to sell its shares must open an account at Dinosaur. While tZERO ATS, LLC is working to add additional broker-dealer effects trading on the tZERO ATS, there is no assurance that any executing broker-dealers will be added, and Dinosaur could continue to be the only ATS-executing broker-dealer. If Dinosaur for any reason ceases to operate, there would be no broker-dealer to effect sales of the Series A-1 Preferred stock on tZERO ATS. This could prevent all trading in the Series A-1 Preferred stock and would likely materially and adversely affect the trading prices of the Series A-1 Preferred stock. In such a case, however, the Board could exercise its authority to change or add additional alternative trading systems, trading markets or venues on which the Series A-1 Preferred stock may be sold.

Likewise, Electronic Transaction Clearing, Inc., now doing business as Apex PRO ("Apex"), is the only broker-dealer that clears transactions effected on the tZERO ATS. If for any reason Apex ceases to clear trades for Dinosaur or refuses to clear trades for any future ATS-executing broker-dealers of tZERO ATS and no clearing firm succeeds Apex, trading in the Series A-1 Preferred stock on the tZERO ATS may be interrupted and such an interruption would likely materially and adversely affect the trading price of the Series A-1 Preferred stock.

The tZERO ATS has had limited volume. Even if a more liquid trading market for the Series A-1 Preferred does develop on the tZERO ATS utilizing the tZERO Technology Stack or other technology developed by tZERO, the depth and liquidity of that market and the ability to sell the Series A-1 Preferred stock may nevertheless be limited, which may have a material adverse effect on the liquidity for, and the market price of, the Series A-1 Preferred stock.

Moreover, peer-to-peer transfers of the Series A-1 Preferred stock outside of orders submitted to the tZERO ATS by an ATS-executing broker-dealer, or with a broker-dealer that itself maintains an account with an ATS-subscribing broker-dealer, on behalf of its customers ("peer-to-peer transfers"), are not permitted, subject to limited circumstances. Computershare will register peer-to-peer transfers of record ownership of the Series A-1 Preferred stock in limited circumstances that do not constitute "sales" for purposes of securities laws, such as a transfer from broker-dealer to broker-dealer, with the stockholder's carrying broker-dealer being reflected as the record holder, or a transfer by a stockholder who is the record holder pursuant to a divorce decree, death or gift (and then only following compliance with Computershare's procedures, including delivery of appropriate documentation). However, the Board is authorized to exclude additional transactions or classes of transactions from the requirement to make "sales" on the tZERO ATS.

The restrictions on the tax reporting of holder's cost basis in shares of Series A-1 Preferred stock will not allow normal tax planning in the sale of shares of Series A-1 Preferred stock and may result in disadvantageous tax consequences to a seller of Series A-1 Preferred stock.

Only one method of cost basis reporting (the first-in, first-out, or "FIFO" method) is available for the Series A-1 Preferred stock. As a result, sellers of Series A-1 Preferred stock may be required to pay more tax on their sales or to pay taxes earlier than if other normal methods of cost basis reporting had been available, which could have an adverse tax effect on sellers of Series A-1 Preferred stock and the market price of the Series A-1 Preferred stock.

The record of ownership of each digital wallet address will be available to the general public and it may be possible for members of the public to determine the identity of the record holders of the Series A-1 Preferred stock.

Although the record of ownership included in the blockchain is a non-controlling digital "courtesy carbon copy" of the records maintained by Computershare, it will be made publicly available. The publicly available information will include the digital wallet address of each holder of record transacting in Series A-1 Preferred stock and the security position information of such holder of record and the entire history of debits and credits to the relevant security position information of each digital

wallet address, but it will not include any personal identifiable information. As a result, it may be possible for members of the public to determine the identity of the record holders of certain wallet addresses based on the publicly available information in the courtesy carbon copy, as well as other publicly available information, including any ownership reports required to be filed with the SEC regarding the Series A-1 Preferred stock.

The Series A-1 Preferred stock depends on Computershare as the transfer agent for the Series A-1 Preferred stock.

Computershare serves as the transfer agent for the Series A-1 Preferred stock and ownership of the Series A-1 Preferred stock is determined by the books and records of Computershare. Our agreement with Computershare can be terminated by either party on 60 days' notice. If Computershare chooses to exercise its termination rights or otherwise ceases to operate as a transfer agent, we would seek to engage a successor transfer agent. In the absence of finding such a successor, Overstock would need to assume the role of transfer agent. While we believe we could successfully assume the role of transfer agent, no assurance can be given that we would be able to do so and if we are unable to do so the trading market for the Series A-1 Preferred stock would be adversely affected and it may be difficult or impossible for Overstock to pay dividends or liquidation preference or provide voting rights to the correct holders of record of the Series A-1 Preferred stock.

The potential application of U.S. laws regarding traditional investment securities to the Series A-1 Preferred is unclear.

We believe that the Series A-1 Preferred stock should be treated as any other conventional, uncertificated book-entry security. However, various regulators may disagree with this assertion and conclude that the Series A-1 Preferred stock should not be treated as any other traditional investment security. For example, we believe that the Series A-1 Preferred stock is not a "digital asset security" within the meaning of the July 8, 2019 Joint Staff Statement on broker-dealer Custody of Digital Asset Securities (the "July Statement"), and that as a result, broker-dealers will have a good control location consistent with the July Statement. However, federal securities regulatory authorities may disagree with that conclusion and we could be required to take further steps with regulators to establish a good control location. The occurrence of any such issue or dispute could have a material adverse effect on the liquidity for, and market price of, the Series A-1 Preferred stock. In addition, if regulatory authorities take the position that Series A-1 Preferred stock is a "digital asset security," then broker-dealers may need to submit a Form CMA with FINRA in order to hold the Series A-1 Preferred stock on your behalf, and that could prevent other broker-dealers from becoming executing broker-dealers to the tZERO ATS. As a result, holders of the Series A-1 Preferred stock may not be able to open an account with another ATS-executing broker-dealer authorized to facilitate trading of the Series A-1 Preferred stock on the tZERO ATS.

If we elect to repurchase the Series A-1 Preferred stock on the tZERO ATS, it could have a material adverse effect on the liquidity in, and trading prices of, the Series A-1 Preferred stock.

We do not currently intend to repurchase any of the Series A-1 Preferred stock on the tZERO ATS. However, we could do so, subject to applicable regulations regarding issuer repurchases of their capital stock. If we do so, we would do so only at prices lower than the prices at which we are entitled to redeem the shares. If we repurchase shares of Series A-1 Preferred stock, the trading market for the Series A-1 Preferred stock could become less liquid, which would likely cause the trading prices of the Series A-1 Preferred stock to decrease, which would give us an economic incentive to repurchase additional shares. The occurrence of the foregoing could have a material adverse effect on the liquidity in, and trading prices of, the Series A-1 Preferred stock. There are no restrictions on our repurchase of shares of Series A-1 Preferred stock while there is any arrearage in the payment of dividends.

We may have the right to convert the outstanding shares of Series A-1 Preferred stock into shares of Series B Preferred stock at any time.

Pursuant to the amended and restated Series A-1 Preferred stock certificate of designation, we have the right to convert the Series A-1 Preferred stock into Series B Preferred stock at any time, and the terms of the Series B Preferred stock may be amended at any time without the consent of the holders of the Series A-1 Preferred stock. Currently, there are not enough authorized shares of Series B Preferred stock to permit conversion of the Series A-1 Preferred stock into Series B Preferred stock. In the future, the Board could seek stockholder approval to increase the authorized number of shares of preferred stock in an amount sufficient to permit the Board to increase the authorized shares of Series B Preferred stock to permit conversion of the Series A-1 Preferred stock into Series B Preferred stock, and then we would have the ability to exercise this conversion right. Any such conversion and any such amendment of the Series B Preferred stock could have a material adverse effect on the trading price of the Series A-1 Preferred stock. If we were to do so at a time when the Series B Preferred stock were trading at a price lower than the trading price of the Series A-1 Preferred stock, holders of Series A-1 Preferred stock would likely experience an immediate and potentially material decrease in the market value of the Series A-1 Preferred stock they hold and

of the Series B Preferred stock they would receive upon the conversion. Moreover, the existence of this conversion right could have a negative impact on the liquidity for, and market value of, our Series A-1 Preferred stock.

tZERO ATS and tZERO are involved in ongoing discussions with regulatory authorities.

tZERO ATS and tZERO have been and remain involved in ongoing oral and written communications with, and have received subpoenas from, regulatory authorities in connection with ongoing examinations, inquiries, or investigations. Any failure of tZERO ATS, LLC, the tZERO ATS, or tZERO to satisfy FINRA, the SEC, or any other regulatory authority could result in trading halts on the tZERO ATS and fines and penalties being imposed. Any such trading halt will adversely affect the trading market for the Series A-1 Preferred stock and may prevent the sale of Series A-1 Preferred stock until the failure is rectified.

Technology on which the tZERO ATS relies for its operations may not function properly.

The technology on which the tZERO ATS relies, including the tZERO Technology Stack, may not function properly because of internal problems or as a result of cyber-attacks or external security breaches. Any such malfunction may adversely affect the ability of holders with a brokerage account at a tZERO ATS subscriber to execute trades of the Series A-1 Preferred stock on the tZERO ATS. Moreover, since trading in the Series A-1 Preferred stock has been limited, the tZERO ATS platform may not function properly in cases of increased trading volume. If the technology used by the tZERO ATS does not work as anticipated, trading of the Series A-1 Preferred stock could be limited or even suspended. In such as case, however, our board of directors has the authority to change or add alternative trading systems, trading markets or venues on which the Series A-1 Preferred stock may be sold, but there can be no assurance that they will choose to do so in the future, or that any such additional trading venues would be found or prove suitable to support the Series A-1 Preferred stock.

The technology on which the tZERO ATS depends has been developed by our indirectly held majority-owned subsidiary, tZERO, and is licensed to its wholly-owned subsidiary, tZERO ATS, LLC, and the Series A-1 Preferred stock depends on both tZERO and tZERO ATS, LLC, neither of which has substantial resources.

tZERO is an indirectly held majority-owned subsidiary of ours and owns 100% of the equity interest in tZERO ATS, LLC. tZERO licenses the technology to tZERO ATS, LLC, and tZERO uses tZERO technology, including the tZERO Technology Stack, to operate the tZERO ATS. tZERO is a growth-stage company, and neither tZERO nor tZERO ATS, LLC has substantial resources. If any one or more of Overstock, tZERO or tZERO ATS, LLC were unable to fund its operations in the future, or if any one or more of them were to become the subject of a bankruptcy or other insolvency proceeding, tZERO ATS, LLC might be unable to continue to operate the tZERO ATS, and the Series A-1 Preferred stock could be materially adversely affected. In any such event, or if the tZERO ATS, LLC or tZERO technology were to be unable to operate as intended for any reason, holders of our capital stock, including the Series A-1 Preferred stock, could lose their ability to trade our Series A-1 Preferred stock, which would have a material adverse effect on the market value of that stock, and may have a material adverse effect on the liquidity for, and the price of, our Common Stock.

Transactions involving the Series A-1 Preferred stock may not be properly reflected on the blockchain.

A significant feature of the Series A-1 Preferred stock is that, while the records of Computershare (as our transfer agent) govern record ownership of the Series A-1 Preferred stock, for all record holders on the transfer agent's official and controlling records there is a "courtesy carbon copy" of certain Computershare ownership records on the blockchain. Following Computershare's approval of any change in record ownership, the security position information relevant to a record holder's digital wallets addresses on the blockchain is updated consistent with changes to Computershare's official books and records. To the extent that Computershare's records and the "courtesy carbon copy" get out of sync, there could be a delay while we correct any such inconsistencies and such inconsistencies may cause investor confusion with respect to their record holdings of the Series A-1 Preferred stock, which could adversely affect the liquidity for, and market value of, the Series A-1 Preferred stock.

The potential application of U.S. laws regarding virtual currencies and money transmission to tZERO ATS, LLC's use of the Ethereum blockchain is unclear.

The non-controlling blockchain-based "courtesy carbon copy" of record ownership uses tZERO technology, which, in turn, uses the Ethereum blockchain. Although tZERO's wholly owned subsidiary, tZERO Crypto maintains certain licenses in connection with its virtual currency applications, none of the parties involved in the operation of the tZERO ATS using tZERO technology is licensed under the virtual currency or money transmission regulations of any state in the United States or registered with FinCEN. If any regulatory authority were to assert that additional licensing or registration was required by tZERO ATS, LLC or tZERO, it could affect the operations or viability of either of them, and could adversely affect the availability of the tZERO ATS as a trading venue for the Series A-1 Preferred stock. This in turn would have a material adverse

effect on the liquidity of the Series A-1 Preferred stock and the holders' ability to trade such securities. In addition, because tZERO ATS, LLC is a wholly-owned subsidiary of tZERO, any negative impact on the value of the tZERO ATS or tZERO technology, including the tZERO Technology Stack, could have an adverse impact on the value of Overstock, which would cause our stock price to decrease.

Although the Series A-1 Preferred stock has characteristics similar to those of our common stock, the differences may adversely affect the trading prices of the Series A-1 Preferred stock.

Each share of Series A-1 Preferred stock is intended to have voting and dividend rights and rights upon liquidation substantially similar to those of one share of our common stock, except that the Series A-1 Preferred stock will have a dividend preference over the common stock, the Series A-1 Preferred stock will be limited to trading on the tZERO ATS, and we will have the right to convert the Series A-1 Preferred stock into Series B Preferred stock. These provisions may have a material adverse effect on the liquidity for, and trading price of, the Series A-1 Preferred stock.

We do not expect there to be any market makers to develop a trading market in the Series A-1 Preferred stock.

Most securities that are publicly traded in the United States have one or more broker-dealers acting as "market makers" for the security. A market maker is a firm that stands ready to buy and sell the security on a regular and continuous basis at publicly quoted prices. We have no assurances that the Series A-1 Preferred stock will ever have any market makers. We expect the lack of market makers to continue to contribute to a lack of liquidity in the Series A-1 Preferred stock, which could have a material adverse effect on holders' ability to trade them.

Additional Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock

We do not intend to issue any additional shares of Series B Preferred stock, which is expected to continue to result in very limited trading.

We do not intend to issue any additional shares of Series B Preferred stock. This will likely result in limited trading in the Series B Preferred and the number of shares of Series B is limited to 370,000.

A share of Series A-1 Preferred stock and/or Series B Preferred stock may have a substantially lower market value than a share of our common stock.

The trading prices of the Series A-1 Preferred stock and the Series B Preferred stock have been at times, and may be in the future, substantially lower than the trading price of our common stock, which could have a material adverse effect on holders of Series A-1 Preferred stock and holders of Series B Preferred stock.

It is uncertain whether the IRS will treat the Series A-1 Preferred stock and Series B Preferred stock as common stock or preferred stock for U.S. federal income tax purposes.

We intend to treat the Series A-1 Preferred stock and Series B Preferred stock as common stock for U.S. federal income tax purposes. Nevertheless, it is unclear whether the IRS will treat the Series A-1 Preferred stock and Series B Preferred stock as common stock for U.S. federal income tax purposes. If the IRS were not to treat either the Series A-1 Preferred stock or the Series B Preferred stock as common stock for U.S. federal income tax purposes, it could have a material adverse effect on the holders of Series A-1 Preferred stock and the holders of Series B Preferred stock.

Holders of Series A-1 Preferred stock and Series B Preferred stock will have no rights with respect to our common stock.

Holders of Series A-1 Preferred stock and holders of the Series B Preferred stock will have no rights with respect to our common stock, and no right to convert shares of Series A-1 Preferred stock or Series B Preferred stock into shares of common stock or to exchange shares of Series A-1 Preferred stock or Series B Preferred stock for shares of common stock, except that holders of Series A-1 Preferred stock and holders of Series B Preferred stock will have the right to vote with the common stock on any matter submitted to a vote of the holders of the common stock, the right to receive payments upon liquidation equally with the holders of the common stock, and the right to receive dividends in preference to the holders of the common stock and to participate in any dividend paid to the holders of our common stock, subject to the limitations set forth in the respective certificates of designation of Series A-1 Preferred stock and Series B Preferred stock.

Our obligation to pay dividends on the Series A-1 Preferred stock and Series B Preferred stock is limited, and our ability to pay dividends on the Series A-1 Preferred stock and Series B Preferred stock may be limited.

Our obligation to pay preferential dividends on the Series A-1 Preferred stock is subject to our Board declaring such dividend payments. Further, although we will be contractually restricted from paying a dividend on the common stock unless we have paid preferential cumulative \$0.16 per share annual dividends on the Series A-1 Preferred stock and preferential cumulative 1.0% annual dividends on the Series B Preferred stock, we have never paid a cash dividend on the common stock and we have no present intention of doing so. Consequently, our failure to pay preferential dividends on the Series A-1 Preferred stock and on the Series B Preferred stock might have no legal effect on us at all, although it could adversely affect the liquidity for, and trading prices of, the Series A-1 Preferred stock and of the Series B Preferred stock. Further, our payment of any dividends will be subject to contractual and legal restrictions and other factors our Board deems relevant. Further, we may elect not to pay dividends on the Series A-1 Preferred stock, the Series B Preferred stock or both rather than limiting other proposed expenditures, including expenditures that may not be contractually required. Moreover, agreements governing any future indebtedness of ours may further limit our ability to pay dividends on our capital stock, including the Series A-1 Preferred stock and the Series B Preferred stock. In addition, our ability to pay dividends is limited by applicable law. Although there are no arrearages in cumulative preferred dividends and we declared and paid a cash dividend of \$0.16 per share to the holders of our then outstanding preferred stock during 2017, 2018 and 2019, there is no assurance that we will be able or that our Board will decide to do so in 2020 or the future. Any of the foregoing facts or events could have a material adverse effect on the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock and on the liquidity for, and trading prices of, the Series A-1 Preferred stock and the Series B Preferred stock.

Voting rights on the Series A-1 Preferred stock and Series B Preferred stock generally will be limited to voting together with the holders of the common stock and Series A Preferred stock or Series B Preferred stock as a single class, and the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock collectively will have only a small percentage of the voting power on any matter submitted to the holders of the common stock, Series A-1 Preferred stock and Series B Preferred stock, voting together as a single class.

Voting rights of the Series A-1 Preferred stock or Series B Preferred stock generally will be limited to voting together with the holders of the common stock, Series A-1 Preferred stock and Series B Preferred stock, as a single class. If an amendment requiring stockholder approval is proposed to our amended and restated certificate of incorporation, the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock will vote together with the holders of the common stock as a single class, but neither the holders of the Series A-1 Preferred stock nor the holders of the Series B Preferred stock will be entitled to a class vote on the amendment, unless the proposed amendment would adversely affect the special rights, preferences, privileges and voting powers of the Series A-1 Preferred stock or Series B Preferred stock, respectively increases or decreases of the authorized number of shares of Series A-1 Preferred stock or Series B Preferred stock, respectively. These limited voting rights could have a material adverse effect on holders of Series A-1 Preferred stock and holders of Series B Preferred stock and on the trading prices of the Series A-1 Preferred stock and the Series B Preferred stock.

The holders of the Series A-1 Preferred stock and Series B Preferred stock will have no right as a separate class to elect any members of our board of directors under any circumstances, including upon any failure of our board of directors to declare or pay any dividend on the Series A-1 Preferred stock or Series B Preferred stock. Further, the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock, together, also will have no right by themselves to elect any members of our board of directors under any circumstances. The holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock will be entitled only to vote with the holders of the common stock as a single class in the election of directors and on any other matter coming before a vote of the holders of the common stock. Holders' lack of such rights could have a material adverse effect on holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock and the liquidity for, and trading prices of, the Series A-1 Preferred stock and the Series B Preferred stock.

The Series A-1 Preferred stock and the Series B Preferred stock will rank junior to all of our and our subsidiaries' liabilities in the event of a bankruptcy, liquidation or winding up of our or our subsidiaries' business.

In the event of our bankruptcy, liquidation or winding up, our assets will be available to make payments to holders of Series A-1 Preferred stock and to holders of Series B Preferred stock only after all of our liabilities have been paid, and neither the Series A-1 Preferred stock nor the Series B Preferred stock will have any preference over our common stock in the event of our bankruptcy, liquidation or winding up. In addition, the Series A-1 Preferred stock and Series B Preferred stock will rank structurally junior to all existing and future liabilities of our subsidiaries. Holders' rights to participate in the assets of our subsidiaries upon any liquidation or reorganization of any subsidiary will rank junior to the claims of creditors. In the event of our bankruptcy, liquidation or winding up, there may not be sufficient assets remaining, after paying our and our subsidiaries' liabilities, to pay any amounts to the holders of Series A-1 Preferred stock or Series B Preferred stock then outstanding. We may

incur significant debt or other liabilities in the future, and the Series A-1 Preferred stock and Series B Preferred stock contain no covenant or restriction on our ability to incur debt or other obligations. Any bankruptcy, liquidation or winding up of our company or any of its wholly or partially owned subsidiaries would have a material adverse effect on the liquidity for, and trading prices of, the Series A-1 Preferred stock and Series B Preferred stock.

Moreover, we do not own all of the equity securities of our subsidiaries, including tZERO. For example, we have adopted an employee equity incentive plan pursuant to which tZERO has issued, and may continue to issue, shares or other equity interests or awards having the economic effects of equity interests to employees. As a result, following satisfaction of the claims of creditors of those subsidiaries as discussed above, our right to receive distributions as a stockholder with respect to our equity interests in those majority owned subsidiaries will be shared with third party equity holders of tZERO and our other subsidiaries, whether now existing or created in the future, including our employees holding shares of any of them.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We own and lease various properties in the United States and internationally. We use the properties for corporate office space, data centers, and warehouse, fulfillment and customer service space. As of March 6, 2020, we operated the following facilities (square feet in thousands):

	United States	International	Total
Owned facilities	236	—	236
Leased facilities	1,494	21	1,515
Total facilities	1,730	21	1,751

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are involved in, or become subject to litigation or other legal proceedings concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. We also prosecute lawsuits to enforce our legal rights. In connection with such litigation or other legal proceedings, we have been in the past and we may be in the future subject to significant damages, associated costs, or equitable remedies relating to the operation of our business. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. For additional details, see the information set forth under Item 15 of Part IV, "Financial Statements—Note 12. Commitments and Contingencies, subheading Legal Proceedings," contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K, which is incorporated by reference in answer to this Item.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market information

The principal U.S. trading market for our common stock is the Nasdaq Global Market. Our common stock is traded under the symbol "OSTK."

Holders

As of March 6, 2020, there were 110 holders of record of our common stock. Many of our shares of common stock are held by brokers and other institutions on behalf of the beneficial owners.

Dividends

We have never declared or paid any cash dividends on our common stock. However, we announced on July 30, 2019 that we had declared a dividend in the form of one Series A-1 Preferred stock share for every 10 shares of common stock or preferred shares held by a stockholder on the record date. The record and distribution dates for the preferred stock dividend were announced at that time to be September 23, 2019 and November 15, 2019, respectively. On September 18, 2019, we announced that we were postponing the record date for the preferred stock dividend. On February 13, 2020, a special meeting of stockholders was held, where the stockholders approved amendments to our certificate of designation allowing us to proceed with issuing the Dividend. As of the date of this filing, we have not declared a record date for the Dividend, nor have we distributed the Dividend. With regard to cash dividends, we currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends on our common stock in the foreseeable future. Any future determination to pay dividends on our common stock will be at the discretion of our Board of Directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the Board of Directors deems relevant.

At December 31, 2019 we had 481,259 shares of our Preferred Stock (as defined below) outstanding. The Preferred Stock ranks senior to our common stock with respect to dividends. Holders of the Class A-1 Preferred Stock are entitled to an annual cash dividend of \$0.16 per share, and holders of the Class B Preferred Stock are entitled to an annual cash dividend at the annual rate of 1.0% multiplied by \$15.68, in each case in preference to any dividend payment to the holders of the common stock, out of funds legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of the Preferred Stock are also entitled to participate in any dividends we pay to the holders of the common stock, subject to potentially different treatment if we effect a stock dividend, stock split or combination of the common stock. There are no arrearages in cumulative preferred dividends. We declared and paid a cash dividend of \$0.16 per share on our preferred stock during 2019.

Recent sales of unregistered securities

None.

Issuer purchases of equity securities

None.

Preferred Stock

In December 2016, we issued 695,898 shares of our preferred stock, consisting of 126,565 shares of our Blockchain Voting Series A Preferred stock (the "Series A Preferred") and 569,333 shares of our Voting Series B Preferred stock (the "Series B Preferred"), in a public offering registered under the Securities Act of 1933, as amended.

On May 1, 2019, we informed holders of our Series A Preferred stock of an opportunity to exchange (the "Exchange") outstanding Series A Preferred stock for newly-issued shares of the Company's Series A-1 Preferred stock (the "Series A-1 Preferred" and together with the Series A Preferred stock and Series B Preferred stock, the "Preferred Stock"). Between June 26, 2019 and July 30, 2019, the Exchange was completed for participating stockholders. In connection with the Exchange, 124,546 shares of Series A Preferred stock were validly tendered and accepted for exchange by the Company and the Company

issued 124,546 shares of Series A-1 Preferred stock in exchange therefore. In connection with the completion of the Exchange, 2,019 shares of Series A Preferred stock were converted into shares of Series B Preferred stock (such transaction, the "Conversion"). Following the completion of the Exchange and the Conversion, the Company eliminated the Series A Preferred stock by filing a Certificate of Elimination with the Delaware Secretary of State.

As of December 31, 2019, the 481,259 shares of Preferred Stock that remained outstanding constituted approximately 1.2% of the total number of shares of the Preferred Stock and the common stock, taken together. Neither the Series A-1 Preferred stock nor the Series B Preferred stock is registered under the Securities Exchange Act of 1934, as amended. The Series A-1 Preferred stock are digital securities that trade exclusively on the alternative trading system run by tZERO ATS, LLC, an SEC-registered broker-dealer and member of FINRA and SIPC. The tZERO ATS utilizes the tZERO Technology Stack to facilitate trading of the Series A-1 Preferred stock. While the Series A-1 Preferred stock benefit from a digital "courtesy carbon copy" of record ownership on the blockchain, the records of Computershare, acting as transfer agent and registrar, govern record ownership of the Series A-1 Preferred stock in all instances. In order to trade the Series A-1 Preferred stock, holders must open an account with a broker-dealer subscribing to the tZERO ATS, which currently includes only Dinosaur Financial Group, LLC ("Dinosaur"), an SEC registered broker-dealer and member of FINRA and SIPC, but may in the future include other broker-dealers that become subscribers to the tZERO ATS or maintain an account with an ATS-subscribing broker-dealer. The Series B Preferred stock are conventional securities that trade in the over-the-counter market and are quoted on the OTCQX market operated by OTC Markets Group.

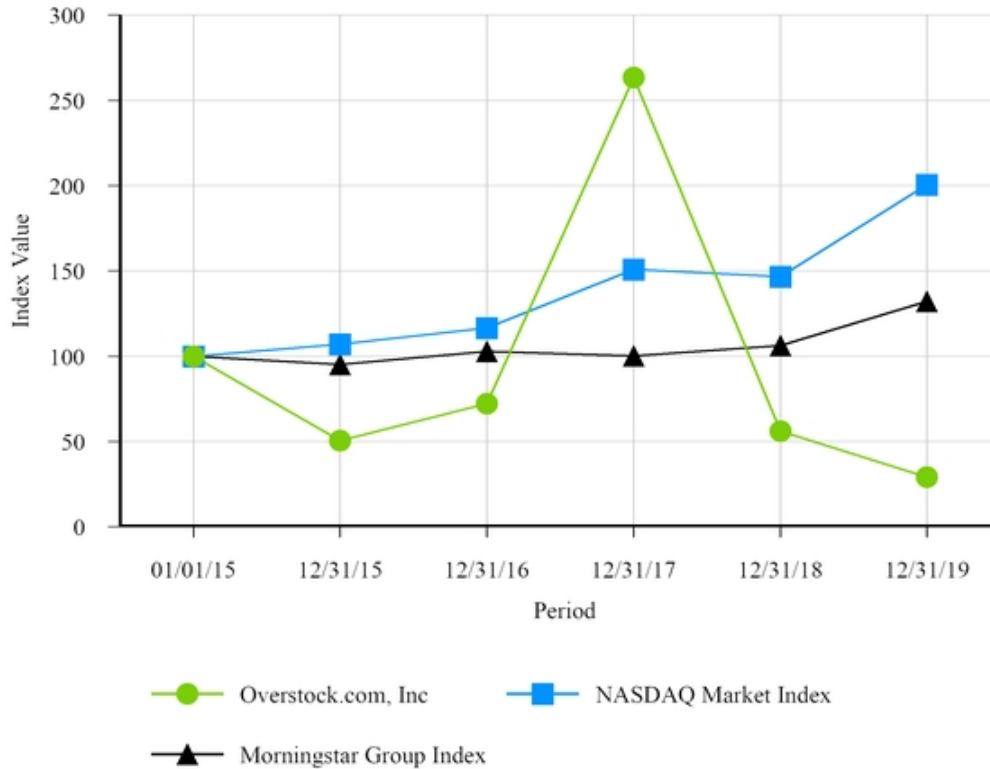
Holders of the Preferred Stock do not have any right to convert or exchange such shares for shares of our common stock or any other security; however, at our sole discretion, we may convert the Series A-1 Preferred stock shares into Series B Preferred stock at any time on a one-to-one basis. The Preferred Stock ranks senior to the common stock with respect to dividends. Holders of the Class A-1 Preferred Stock are entitled to an annual cash dividend equal to \$0.16 per share, and holders of the Class B Preferred Stock are entitled to an annual cash dividend at the annual rate of 1.0% multiplied by \$15.68, rounded to the nearest \$0.01, in each case in preference to any dividend payment to the holders of the common stock, out of funds legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of the Preferred Stock are also entitled to participate in any dividends we pay to the holders of the common stock, subject to different treatment if we effect a stock dividend, stock split or combination of the common stock. In the event of any liquidation, any amount available for distribution to stockholders after payment of all liabilities will be distributed proportionately among the holders of common stock, the holders of Series A-1 Preferred stock and the holders of Series B Preferred stock, with each share of Series A-1 Preferred stock and each share of Series B Preferred stock being treated as though it were a share of our common stock. If we are party to any merger or consolidation in which our common stock is changed into or exchanged for stock or other securities of any other person (or the Company) or cash or any other property (or a right to receive the foregoing), we will use all commercially reasonable efforts to cause each outstanding share of the Preferred Stock to be treated as if such share were an additional outstanding share of common stock in connection with any such transaction.

Securities Authorized for Issuance under Equity Compensation Plans

Except as set forth herein, the information required by this Item is included in Part III, Item 12.

COMPARISON OF 5-YEAR CUMULATIVE TOTAL RETURN

The following graph compares the total cumulative stockholder return, on our common stock with the total cumulative return of the NASDAQ Market Index—U.S. ("NASDAQ Market Index") and the Morningstar Specialty Retail Index ("Morningstar Group Index") during the period commencing on January 1, 2015 through December 31, 2019. The graph assumes a \$100 investment at the beginning of the period in our common stock, the NASDAQ Market Index and the Morningstar Group Index, and the reinvestment of any dividends. The NASDAQ Market Index and the Morningstar Group Index are included for comparative purposes only. They do not necessarily reflect management's opinion that such indices are an appropriate measure of the relative performance of the stock involved, and they are not intended to forecast or be indicative of possible future performance of the Company's common stock. Historic stock price performance is not necessarily indicative of future stock price performance.



ITEM 6. SELECTED FINANCIAL DATA

The selected consolidated financial data presented below should be read in conjunction with the consolidated financial statements of Overstock.com, Inc. and related footnotes included elsewhere in this Annual Report on Form 10-K and the discussion under Item 7—"Management's Discussion and Analysis of Financial Condition and Results of Operations." The selected consolidated financial data has been derived from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The historical financial and operating information may not be indicative of our future performance. The following discussion and analysis also should be read in conjunction with the disclosures in Item 1. "Business" under "Our Retail Business" and "Our Medici Business," as well as the risk factors described in Item 1A. "Risk Factors."

Revenues and cost of goods sold recorded in "Direct" and "Partner and Other" are now split between "Retail" and "Other" on the consolidated statements of operations. "Other" includes revenues and costs of goods sold related to our Medici business. In addition, we have recast the prior period revenues and cost of goods sold to conform with current year presentation.

	Year ended December 31,				
	2019	2018	2017	2016	2015
(in thousands, except per share data)					
Consolidated Statement of Operations Data:					
Revenue, net					
Retail	\$ 1,434,974	\$ 1,800,187	\$ 1,728,104	\$ 1,784,782	\$ 1,655,908
Other	24,444	21,405	16,652	15,181	1,930
Total net revenue	1,459,418	1,821,592	1,744,756	1,799,963	1,657,838
Cost of goods sold					
Retail	1,147,025	1,452,195	1,392,558	1,458,411	1,353,184
Other	19,300	15,489	11,647	10,203	—
Total cost of goods sold	1,166,325	1,467,684	1,404,205	1,468,614	1,353,184
Gross profit	293,093	353,908	340,551	331,349	304,654
Operating expenses:					
Sales and marketing	143,120	274,479	180,589	147,896	124,468
Technology	135,338	132,154	115,878	106,760	98,533
General and administrative	138,124	164,481	90,718	89,298	82,187
Litigation settlement	—	—	—	(19,520)	—
Total operating expenses	416,582	571,114	387,185	324,434	305,188
Operating income (loss)	(123,489)	(217,206)	(46,634)	6,915	(534)
Interest income	1,797	2,208	659	326	155
Interest expense	(342)	(1,468)	(2,937)	(877)	(140)
Other income (expense), net	(12,501)	(3,488)	1,178	14,181	3,634
Income (loss) before income taxes	(134,535)	(219,954)	(47,734)	20,545	3,115
Provision (benefit) for income taxes	185	(2,384)	64,188	9,297	1,895
Consolidated net income (loss)	\$ (134,720)	\$ (217,570)	\$ (111,922)	\$ 11,248	\$ 1,220
Less: Net loss attributable to noncontrolling interests	(12,879)	(11,500)	(2,044)	(1,274)	(1,226)
Net income (loss) attributable to stockholders of Overstock.com, Inc.	\$ (121,841)	\$ (206,070)	\$ (109,878)	\$ 12,522	\$ 2,446
Net income (loss) per common share—basic:					
Net income (loss) attributable to common shares—basic	\$ (3.46)	\$ (6.83)	\$ (4.28)	\$ 0.49	\$ 0.10
Weighted average common shares outstanding—basic	34,865	29,976	25,044	25,342	24,612
Net income (loss) per common share—diluted:					
Net income (loss) attributable to common shares—diluted	\$ (3.46)	\$ (6.83)	\$ (4.28)	\$ 0.49	\$ 0.10
Weighted average common shares outstanding—diluted	34,865	29,976	25,044	25,426	24,703

	As of December 31,				
	2019 ⁽¹⁾	2018	2017	2016	2015
	(in thousands)				
Balance Sheet Data:					
Cash and cash equivalents	\$ 112,266	\$ 141,512	\$ 203,215	\$ 183,098	\$ 170,262
Restricted cash	2,632	1,302	455	430	430
Working capital	(38,636)	(26,219)	50,534	(4,843)	(10,308)
Total assets	417,727	461,219	433,815	485,076	428,389
Long-term debt	—	3,069	39,909	44,179	8,843
Total liabilities	239,872	250,513	261,692	312,116	279,028
Stockholders' equity	177,855	210,706	172,123	172,960	149,361

(1) — As a result of the adoption of new accounting guidance on January 1, 2019, we recognized lease assets and liabilities for operating leases with terms of more than twelve months. Prior period amounts were not adjusted and continue to be reported in accordance with our historic accounting policies. See Item 15 of Part IV, "Financial Statements"—Note 2. Accounting Policies for additional information.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Cautionary Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Annual Report on Form 10-K, including those set forth above under "Special Cautionary Note Regarding Forward-Looking Statements" or in Item 1A under the heading "Risk Factors" or elsewhere in this Annual Report on Form 10-K. In addition, our future results may be significantly different from our historical results.

The following discussion and analysis also should be read in conjunction with the disclosures in Item 1. "Business" under "Our Retail Business" and "Our Medici Business," as well as the risk factors described in Item 1A. "Risk Factors." Our ability to pursue some or all of the strategies described below, and the extent to which we would be able to pursue some or all of them, will depend on the resources we have available, and may require significantly more capital than we currently have. These costs have been and are expected to continue to be material. See Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Strategies for our Retail Business

Our Retail business initiatives enable our long-term focus on our three brand pillars, "Product Findability," "Smart Value," and "Easy Delivery and Support." Initiatives for the Retail business include:

- *Improve Mobile Experience* - As more website visitors move to mobile, we are focusing on ensuring our mobile experience is fast, frictionless, and meets the unique needs of the mobile shopping journey. We believe an improved mobile experience improves product findability, conversion, search engine rankings, and organic traffic.
- *Overhaul Discounting and Pricing Experience* - "Smart Value" is the heart of our value proposition. We believe clarifying our pricing and discounting experience allows customers to more confidently purchase at Overstock. Savvy shoppers expect a "smart deal," including saving through coupons, site sales, free shipping (over \$45), Club O rewards and financing. We believe our net promoter score (NPS), repeat purchase rates and conversion will improve as we better optimize the mix of offers and clarify the pricing and discounting experience.
- *Real Time Performance and SKU Profitability* - We are improving our ability to address site, assortment and pricing issues more quickly by enhancing our real-time visibility into site, category, and marketing channel performance. We believe this initiative allows us to reduce negative margin transactions, increase site issue resolution speed, and improve the overall customer experience.

- *Expand Partner Sponsored Marketing* - We are accelerating the "Overstock Sponsored Product" program, a platform for our drop ship partners to promote their products to shoppers through a cost-per-click auction platform. In addition, we are implementing a marketing allowance program across all partners. We believe this allowance program will optimize the marketing promotion type mix and on-sale assortment to better meet the needs of customers.

Strategies for our Medici Business

Medici Ventures' primary business focus continues to be accelerating adoption of blockchain technology to democratize capital, eliminate middlemen, and re-humanize commerce. Medici Ventures accomplishes this by doing the following:

- *Enable existing keiretsu companies to extend runway to profitability* - The companies in Medici Ventures' *keiretsu* continue to push products into production. Medici Ventures supports its *keiretsu* companies by offering a variety of services including development, design, public relations services, and assistance in raising capital from third parties to extend the companies' runway to profitability.
- *Educate the public and policy makers on blockchain technologies* - Medici Ventures works to increase general knowledge of blockchain technology, use cases, and corresponding value through speaking opportunities, article publication, policy maker outreach, and other public relations work.
- *Opportunistically approach future partnerships* - Medici Ventures continues to review and seek out tactical opportunities to partner with seed-stage and startup companies that effectively use blockchain technology. This includes looking for opportunities that can effectively use Medici Ventures' enterprise-level technology development and design talent.

Strategies for our tZERO Business

tZERO is a financial technology company pursuing initiatives to develop and commercialize the financial applications of blockchain technologies. tZERO's primary initiatives currently consist of the following:

- *tZERO Technology Stack* - In furtherance of its mission to revolutionize capital markets with distributed ledger technology, tZERO developed a suite of technologies which enable the trading of digital securities, which are conventional uncertificated securities where the issuer arranges for a digital "courtesy carbon copy" of the transfer agent's share registry to be viewable on the blockchain and may also be referred to as "digitally-enhanced securities". We refer to this suite of technologies as the "tZERO Technology Stack." The Series A-1 Preferred stock and TZROP and the alternative trading system on which they trade each use the tZERO Technology Stack. tZERO intends to further develop, market and license the tZERO Technology Stack to issuers interested in raising capital from the issuance of digital securities and to regulated venues and other market participants that trade, or participate in trading venues for digital securities.
- *tZERO ATS, LLC* - tZERO ATS, LLC, formerly known as PRO Securities, LLC, is a FINRA-registered broker-dealer that owns and operates the tZERO ATS and is a wholly-owned subsidiary of tZERO. The tZERO ATS is a closed system available only to broker-dealer subscribers. The tZERO ATS does not accept orders from non-broker-dealers, nor does it hold, own or sell securities. The tZERO ATS currently supports the trading of two digital securities, the Series A-1 Preferred stock and TZROP and, in the future, is expected to support digital securities from other issuers.
- *Boston Security Token Exchange* - tZERO and BOX Digital have a joint venture, the Boston Security Token Exchange LLC or BSTX, that intends to operate a U.S. national securities exchange facility of BOX Exchange LLC and support trading in a type of digital security called a security token. tZERO is working to create the necessary technology, including leveraging the tZERO Technology Stack, and will manage the ongoing technology implementation, administration, maintenance and support. BOX Digital is providing executive leadership and regulatory expertise. The commencement of operations of BSTX remains subject to approvals by the SEC regarding the proposed trading rules for BSTX and other matters related to its operation.
- *tZERO Markets* - tZERO formed a new wholly-owned subsidiary in May 2019, tZERO Markets, LLC. tZERO Markets is in process of seeking regulatory approvals from FINRA and the SEC which would allow it to provide certain brokerage, investment banking, placement agent and best-efforts underwriting services for traditional equities and digital securities. tZERO Markets intends to offer a website and mobile application that allow retail customers to conduct self-directed trading of conventional and digital securities, along with its other activities.

- *tZERO Crypto* - Effective January 1, 2019, tZERO acquired 100% of the equity interest in tZERO Crypto, Inc., formerly Bitasy, Inc., a startup founded to create a regulatorily compliant bridge between cryptocurrency and fiat currency for retail customers. tZERO Crypto began limited operations in 2018 and tZERO expanded the cryptocurrency wallet's capabilities throughout 2019. tZERO Crypto now provides non-custodial cryptocurrency wallet and exchange services allowing customers the ability to store, purchase and sell certain cryptocurrencies through the tZERO Crypto mobile application.
- *SpeedRoute* - SpeedRoute is a wholly-owned broker-dealer subsidiary of tZERO. SpeedRoute is an electronic, agency-only FINRA-registered broker-dealer that provides connectivity for its customers to U.S. equity exchanges as well as off-exchange sources of liquidity such as dark pools. All of SpeedRoute's customers are registered broker-dealers. SpeedRoute does not hold, own or sell securities.
- *Digital Locate Receipts Software* - tZERO has completed development of "digital locate receipt" software intended to help broker-dealer licensees with stock inventory load to manage and create a blockchain-based record of their inventory. The DLR Software is meant to allow broker-dealer licensees to assist short sellers of public securities in establishing that they have a record of compliance with regulatory requirements. At this point, tZERO has paused commercialization of the DLR Software as it focuses its resources on other blockchain initiatives but may resume its commercialization and expects the underlying technology retains valuable potential uses in tZERO's product ecosystem.
- *Verify Investor, LLC* - tZERO's subsidiary, Verify Investor, LLC, provides an online accredited investor verification solution.

tZERO also continues to identify, evaluate and pursue various opportunities for strategic transactions to enhance the services and expertise it offers its customers as well as to refine its strategic operational focus. Subject to board approval, tZERO's management exercises substantial discretion in identifying appropriate strategic transactions and negotiating the terms of such transactions. Management's determinations are based on numerous financial, strategic and operational assumptions, and there can be no assurance that such assumptions will prove to be true. Moreover, such strategic transactions may fail to produce the benefits expected at the time tZERO enters into such transactions.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities in the consolidated financial statements and accompanying notes. The Securities and Exchange Commission ("SEC") has defined a company's critical accounting policies as the ones that are most important to the portrayal of the company's financial condition and results of operations, and which require the company to make its most difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Based on this definition, we have identified the critical accounting policies, estimates and judgments addressed below. We also have other key accounting policies, which involve the use of estimates, judgments, and assumptions that are significant to understanding our results. For additional information, see Item 15 of Part IV, "Financial Statements"—Note 2. Accounting Policies. Although we believe that our estimates, assumptions, and judgments are reasonable, they are based upon information presently available. Actual results may differ significantly from these estimates. Our critical accounting policies are as follows:

- revenue recognition; and
- accounting for the tZERO digital security offering.

Revenue recognition

We derive our revenue primarily from our retail business through our Website from merchandise sold at a point in time and shipped to customers. When we are the principal in a transaction and control the specific good or service before it is transferred to the customer, revenue is recorded gross; otherwise, revenue is recorded on a net basis.

Revenue is recognized when control of the product passes to the customer, typically at the date of delivery of the merchandise to the customer or the date a service is provided and is recognized in an amount that reflects the expected consideration to be received in exchange for such goods or services. As such, customer orders are recorded as deferred revenue prior to delivery of products or services ordered.

As we ship high volumes of packages through multiple carriers, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times based on historical data. However, actual shipping times may differ from our estimates.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and income before taxes for the year ended December 31, 2019 (in thousands):

Change in the Estimate of Average Transit Times (Days)	Year Ended December 31, 2019	
	Increase (Decrease) Revenue	Increase (Decrease) Income Before Tax
2	\$ (8,167)	\$ (1,364)
1	\$ (1,977)	\$ (333)
As reported	As reported	As reported
(1)	\$ 3,332	\$ 506
(2)	\$ 6,520	\$ 1,031

Shipping and handling is considered a fulfillment activity, as it takes place prior to the customer obtaining control of the merchandise, and fees charged to customers are included in net revenue upon completion of our performance obligation. We present revenue net of sales tax, discounts, and expected refunds.

Our merchandise sales contracts include terms that could cause variability in the transaction price for items such as discounts, credits, or sales returns.

We recognize gift cards and Club O rewards in the period they are redeemed. Unredeemed gift cards and Club O rewards not subject to requirements to remit balances to governmental agencies are recognized as net revenue based on historical redemption patterns.

Our Other revenue occurs primarily through our broker-dealer subsidiaries in our tZERO segment. We recognize revenue for our broker-dealer subsidiaries based on the gross amount of consideration that we expect to receive on securities transactions (commission revenue) on a trade date basis.

Accounting for the tZERO Digital Security offering

The Simple Agreements for Future Equity ("SAFEs") offered through tZERO's offering (the "TZROP offering") of its Preferred Equity Tokens, Series A ("TZROP") were accounted for as a prepaid contract to obtain equity interest in tZERO and were classified as a component of noncontrolling interest in our consolidated financial statements. The TZROP issued under the TZROP offering represent a form of preferred stock and are classified as a component of noncontrolling interest within our consolidated financial statements. For additional information, see Item 15 of Part IV, "Financial Statements"—Note 14. Stockholders' Equity.

For information about recent accounting pronouncements, see Item 15 of Part IV, "Financial Statements"—Note 2. Accounting Policies.

Comparison of Years Ended December 31, 2019 and 2018

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."

Revenue decreased approximately 20% in 2019 compared to 2018. This decrease was primarily due to decreased product sales that resulted from a significant reduction in sales and marketing activities, which was part of our effort to return to retail profitability. In January 2018, we shifted our retail strategy to aggressively pursue revenue growth and new customers with a large increase in sales and marketing expenses. We discontinued this strategy in August 2018 and have returned to a more disciplined approach to marketing, but we continued to see revenue benefits from this strategy into the fourth quarter of 2018. In addition, we have seen our revenues negatively impacted due to increased tariffs on goods manufactured in China, search traffic taking longer than expected to translate into purchasing customers, waning consumer confidence decreasing conversion on high dollar purchases industry-wide, and other more general decreases in conversion.

Gross profit decreased approximately 17% in 2019 compared to 2018 primarily due to the decrease in net revenue in the retail business, partially offset by an increase in gross margin. Gross margin increased to 20.1% in 2019, compared to 19.4% in 2018, primarily due to a decrease in product costs resulting from a sales mix shift into home & garden products and a higher proportion of our revenue coming from marketplace sales, which we recognize on a net basis.

Sales and marketing expenses as a percentage of revenue decreased from 15.1% in 2018 to 9.8% in 2019 primarily due to our shift in retail marketing strategy, as described above. This included significantly reduced spending in the sponsored search, display ads on social media, television, and branding marketing channels. In addition, we had a \$5.6 million decrease in marketing staff-related costs due to cost-saving and streamlining actions which began in 2018.

Technology expenses increased \$3.2 million in 2019 compared to 2018 primarily due to a \$4.7 million increase in technology staff-related costs, partially offset by a \$794,000 decrease in depreciation and amortization expenses and a \$251,000 decrease in technology licenses and maintenance costs.

General and administrative expenses decreased \$26.4 million in 2019 compared to 2018 primarily due to an \$11.3 million decrease in legal fees largely due to expenses we incurred in 2018 for our gift card escheatment case in Delaware and capital raising efforts, and a \$10.3 million decrease in intangible asset impairments and asset disposal losses. In addition, we had a \$2.9 million dollar decrease in travel expenses, a \$2.8 million decrease in consulting expenses, and a \$1.2 million decrease in depreciation and amortization expenses. These decreases were partially offset by a \$2.8 million increase in corporate insurance costs.

Liquidity

Our consolidated cash and cash equivalents balance decreased from \$141.5 million as of December 31, 2018 to \$112.3 million as of December 31, 2019, a decrease of \$29.2 million, primarily as the result of cash outflows from operating activities of \$81.6 million and expenditures for fixed assets of \$21.8 million for the year ended December 31, 2019, which was partially offset by cash inflows from the sale of common stock under our "at the market" sales agreement with JonesTrading of \$83.0 million, net of offering costs (including commissions) during the year ended December 31, 2019.

We continue to seek opportunities for growth, in our retail business and through our Medici and tZERO blockchain and financial technology initiatives and through other means. As a result of these initiatives, we will continue to incur additional expenses and may purchase interests in, or make acquisitions of, other technologies or businesses. We anticipate that our initiatives may lead to increased consolidated losses in the foreseeable future, and to reduced liquidity.

Additional commentary related to Medici Ventures

The majority of Medici Ventures' business is its 80% interest in tZERO, which is described below. The remaining business activities of Medici Ventures are focused on developing and advancing blockchain technology. As a result of its business model of providing technical assistance to companies in which Medici Ventures owns an interest, as well as the early stage of development of the companies in which it owns interests, Medici Ventures has not yet generated material revenues. Medici Ventures intends to continue to acquire strategic equity interests in blockchain-related companies, with a focus on companies to which Medici Ventures believes it can provide technical or managerial assistance from time to time. For the year ended December 31, 2019, our pre-tax loss in our Medici Ventures business, excluding our loss in our tZERO business, was \$28.8 million, and we expect to continue to incur significant losses in our Medici Ventures business during 2020.

Additional commentary related to tZERO

To date, tZERO has focused primarily on developing its blockchain businesses and exploring opportunities for novel financial applications of blockchain technology. tZERO does not yet have a stable customer base or backlog orders and has not yet generated any meaningful revenue from any commercially available applications of its blockchain initiatives. The businesses, products, and services that tZERO is pursuing or contemplating will require substantial additional funding, initially for technology development and regulatory compliance, as well as for working capital, marketing and sales, and other substantial costs of developing new products and businesses in emerging areas of technology. For the year ended December 31, 2019, our pre-tax loss in our tZERO business, excluding our loss in the non-tZERO portion of our Medici business, was \$47.4 million, and we expect to continue to incur significant losses in our tZERO business during 2020.

Results of Operations

The following table sets forth our results of operations expressed as a percentage of total net revenue for the years ended December 31, 2019 and 2018:

	Year ended December 31,	
	2019	2018
	(as a percentage of total revenue)	
Revenue, net		
Retail	98.3 %	98.8 %
Other	1.7	1.2
Total net revenue	100.0	100.0
Cost of goods sold		
Retail	78.6	79.7
Other	1.3	0.9
Total cost of goods sold	79.9	80.6
Gross profit	20.1	19.4
Operating expenses:		
Sales and marketing	9.8	15.1
Technology	9.3	7.3
General and administrative	9.5	9.0
Total operating expenses	28.6	31.4
Operating income (loss)	(8.5)	(12.0)
Interest income	0.1	0.1
Interest expense	—	(0.1)
Other income (expense), net	(0.9)	(0.2)
Income (loss) before income taxes	(9.3)	(12.2)
Provision (benefit) for income taxes	—	(0.1)
Consolidated net income (loss)	(9.3)%	(12.1)%

Our Annual Report on Form 10-K for the year ended December 31, 2018, filed March 15, 2019, includes a discussion and analysis of our year-over-year changes, financial condition, and results of operations for the years ended December 31, 2018 and 2017 in Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Revenue

The following table reflects our net revenue for the years ended December 31, 2019 and 2018 (in thousands):

	Year ended December 31,		\$ Change	% Change
	2019	2018		
Revenue, net				
Retail	\$ 1,434,974	\$ 1,800,187	\$ (365,213)	(20.3)%
Other	24,444	21,405	3,039	14.2 %
Total revenue, net	\$ 1,459,418	\$ 1,821,592	\$ (362,174)	(19.9)%

The approximately 20% decrease in total net revenue for the year ended December 31, 2019, as compared to the same period in 2018, was primarily due to decreased product sales that resulted from a significant reduction in sales and marketing activities, which was part of our effort to return to retail profitability. In January 2018, we shifted our retail strategy to aggressively pursue revenue growth and new customers with a large increase in sales and marketing expenses. We discontinued this strategy in August 2018 and have returned to a more disciplined approach to marketing, but we continued to see revenue benefits from this strategy into the fourth quarter of 2018. In addition, we have seen our revenues negatively impacted due to increased tariffs on goods manufactured in China, search traffic taking longer than expected to translate into purchasing

customers, waning consumer confidence decreasing conversion on high dollar purchases industry-wide, and other more general decreases in conversion.

We continue to seek increased participation in our Club O loyalty program, including, in certain instances, by increasing Club O Rewards to our Club O members in lieu of coupons we offer to all customers. For additional information regarding our Club O loyalty program see Item 15 of Part IV, "Financial Statements"—Note 2. Accounting Policies, *Club O loyalty program*.

International sales were less than 3% of total net revenues for 2019 and 2018.

Gross profit and gross margin

Our overall gross margins fluctuate based on changes in supplier cost and / or sales price, including competitive pricing; inventory management decisions; sales coupons and promotions; product mix of sales; and operational and fulfillment costs.

The following table reflects our net revenues, cost of goods sold and gross profit for the years ended December 31, 2019 and 2018 (in thousands):

	Year ended December 31,		\$ Change	% Change
	2019	2018		
Revenue, net				
Retail	\$ 1,434,974	\$ 1,800,187	\$ (365,213)	(20.3)%
Other	24,444	21,405	3,039	14.2 %
Total net revenue	1,459,418	1,821,592	(362,174)	(19.9)%
Cost of goods sold				
Retail	1,147,025	1,452,195	(305,170)	(21.0)%
Other	19,300	15,489	3,811	24.6 %
Total cost of goods sold	1,166,325	1,467,684	(301,359)	(20.5)%
Gross Profit				
Retail	287,949	347,992	(60,043)	(17.3)%
Other	5,144	5,916	(772)	(13.0)%
Total gross profit	\$ 293,093	\$ 353,908	\$ (60,815)	(17.2)%

Gross margins for the past eight quarterly periods and years ending December 31, 2019 and 2018 were:

	Q1 2019	Q2 2019	Q3 2019	Q4 2019	FY 2019
Retail	19.9%	19.7%	20.0%	20.7%	20.1%
Other	22.3%	22.6%	20.6%	19.1%	21.0%
Combined	19.9%	19.8%	20.0%	20.6%	20.1%

	Q1 2018	Q2 2018	Q3 2018	Q4 2018	FY 2018
Retail	21.0%	18.9%	19.5%	17.9%	19.3%
Other	27.2%	24.1%	33.1%	26.8%	27.6%
Combined	21.1%	19.0%	19.7%	18.0%	19.4%

Gross profit for the year ended December 31, 2019 decreased approximately 17% compared to the same period in 2018 primarily due to the decrease in net revenue in the retail business. Gross margin was 20.1% for the year ended December 31, 2019, compared to 19.4% for the same period in 2018. The increase in gross margin was primarily due to decreased product costs resulting from a sales mix shift into home & garden products and a higher proportion of our revenue coming from marketplace sales, which we recognize on a net basis.

Fulfillment costs

Fulfillment costs include all warehousing costs, including fixed overhead and variable handling costs (excluding packaging costs), as well as credit card fees and customer service costs, all of which we include as costs in calculating gross margin. We believe that some companies in our industry, including some of our competitors, account for fulfillment costs within operating expenses, and therefore exclude fulfillment costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

The following table has been included to provide investors additional information regarding our classification of fulfillment costs, gross profit and margin, thus enabling investors to better compare our gross margin with others in our industry (in thousands):

	Year ended December 31,			
	2019		2018	
Total revenue, net	\$ 1,459,418	100%	\$ 1,821,592	100%
Cost of goods sold				
Product costs and other cost of goods sold	1,100,351	75.4%	1,390,750	76.3%
Fulfillment and related costs	65,974	4.5%	76,934	4.2%
Total cost of goods sold	1,166,325	79.9%	1,467,684	80.6%
Gross profit	\$ 293,093	20.1%	\$ 353,908	19.4%

Fulfillment costs as a percentage of sales may vary due to several factors, such as our ability to manage costs at our warehouses, significant changes in the number of units received and fulfilled, the extent to which we use third party fulfillment services and warehouses, and our ability to effectively manage customer service costs and credit card fees. Fulfillment and related costs remained relatively flat during the year ended December 31, 2019 as compared to 2018.

See *Gross profit and gross margin* above for additional discussion.

Operating expenses

Sales and marketing expenses

We use a variety of methods to target our consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail and viral and social media campaigns. We also do brand advertising through television, radio, print ads, and event sponsorships.

The following table reflects our sales and marketing expenses for the years ended December 31, 2019 and 2018 (in thousands):

	Year ended December 31,			
	2019	2018	\$ Change	% Change
Sales and marketing expenses	\$ 143,120	\$ 274,479	\$ (131,359)	(47.9)%
Sales and marketing expenses as a percent of net revenues	9.8%	15.1%		

The 48% decrease in sales and marketing expenses for the year ended December 31, 2019, as compared to the same period in 2018, was primarily due to our shift in retail marketing strategy, as described above. In addition, we had a \$5.6 million decrease in marketing staff-related costs due to cost-saving and streamlining actions which began in 2018.

We are also experiencing an increasingly competitive digital marketing landscape. We have competitors who are spending significant amounts on advertising bidding up the cost of certain marketing channels, such as paid keywords, and expect this trend to continue. While we may not choose to match their levels of spending, this has increased our marketing costs in recent years.

We do not include costs associated with our discounted shipping and other promotions, such as coupons in sales and marketing expense. Rather, we account for them as a reduction of revenue and therefore affect sales and gross margin. We consider discounted shipping and other promotions, such as our policy of free shipping on orders over \$45, as an effective marketing tool, and intend to continue to offer them as we deem appropriate as part of our overall marketing plan.

Technology expenses

We seek to invest efficiently in technology, including web services, customer support solutions, website search, expansion of new and existing product categories, and in investments in technology to enhance the customer experience, improve our process efficiency and support and expand our logistics infrastructure. We expect to continue to increase our technology expenses to support these initiatives and these increases may be material.

The frequency and variety of cyberattacks on our Website, our corporate systems, and on third parties we use to support our technology continues to increase. The impact of such attacks, their costs, and the costs we incur to protect ourselves against future attacks have not been material. However, we consider the risk introduced by cyberattacks to be serious and will continue to incur costs related to efforts to protect ourselves against them.

The following table reflects our technology expenses for the years ended December 31, 2019 and 2018 (in thousands):

	Year ended December 31,		\$ Change	% Change
	2019	2018		
Technology expenses	\$ 135,338	\$ 132,154	\$ 3,184	2.4%
Technology expenses as a percent of net revenues	9.3%	7.3%		

The \$3.2 million increase in technology costs for the year ended December 31, 2019, as compared to the same period in 2018, was primarily due to a \$4.7 million increase in technology staff-related costs, partially offset by a \$794,000 decrease in depreciation and amortization expenses and a \$251,000 decrease in technology licenses and maintenance costs.

General and administrative expenses

The following table reflects our general and administrative expenses for the years ended December 31, 2019 and 2018 (in thousands):

	Year ended December 31,		\$ Change	% Change
	2019	2018		
General and administrative expenses	\$ 138,124	\$ 164,481	\$ (26,357)	(16.0)%
General and administrative expenses as a percent of net revenues	9.5%	9.0%		

The \$26.4 million decrease in general and administrative expenses for the year ended December 31, 2019, as compared to the same period in 2018, was primarily due to a \$11.3 million decrease in legal fees largely due to expenses we incurred in 2018 for our gift card escheatment case in Delaware and capital raising efforts, and a \$10.3 million decrease in intangible asset impairments and asset disposal losses. In addition, we had a \$2.9 million decrease in travel expenses, a \$2.8 million decrease in consulting expenses, and a \$1.2 million decrease in depreciation and amortization expenses. These decreases were partially offset by a \$2.8 million increase in corporate insurance costs.

We continue to seek opportunities for growth, in our retail business and through our Medici blockchain and financial technology initiatives and through other means. As a result of these initiatives, we will continue to incur additional expenses and may purchase interests in, or make acquisitions of, other technologies or businesses. We anticipate that our initiatives may lead to increased consolidated losses in the foreseeable future, and to reduced liquidity. Additionally, we may recognize additional impairment charges from our ownership interest in other entities.

Depreciation and amortization expense

Depreciation expense is classified within the corresponding operating expense categories in the consolidated statements of operations as follows (in thousands):

	Year ended December 31,	
	2019	2018
Cost of goods sold—retail	\$ 687	\$ 354
Technology	20,798	21,894
General and administrative	4,777	4,163
Total depreciation	<u>\$ 26,262</u>	<u>\$ 26,411</u>

Amortization of intangible assets other than goodwill is classified within the corresponding operating expense categories in the consolidated statements of operations as follows (in thousands):

	Year ended December 31,	
	2019	2018
Technology	\$ 3,726	\$ 3,424
Sales and marketing	64	460
General and administrative	(458)	1,402
Total amortization	<u>\$ 3,332</u>	<u>\$ 5,286</u>

General and administrative amortization above was net of reversals due to adjustments to the purchase price allocation for Mac Warehouse. See Item 15 of Part IV, "Financial Statements"—Note 3. Business Combinations.

Stock-based compensation expense

Stock-based compensation expense is classified within the corresponding operating expense categories on our consolidated statements of operations as follows (in thousands):

	Year ended December 31,	
	2019	2018
Cost of goods sold—retail	\$ 212	\$ 201
Sales and marketing	1,941	1,728
Technology	5,796	2,066
General and administrative	10,280	10,361
Total stock-based compensation	<u>\$ 18,229</u>	<u>\$ 14,356</u>

Non-operating income (expense)

Interest expense

Total interest expense decreased \$1.1 million, from \$1.5 million for the year ended December 31, 2018 to \$342,000 for the year ended December 31, 2019. The decrease in interest expense is primarily due to paying off the loan on our headquarters building in May 2018.

Other expense, net

The \$9.0 million increase in other expense, net for the year ended December 31, 2019, as compared to the same period in 2018, was primarily due to a \$10.5 million increase in non-cash losses on equity holdings and other assets.

Income taxes

Our effective tax rate for the years ended December 31, 2019 and 2018 was (0.1%) and 1.1%, respectively. Our effective tax rate is affected by recurring items such as research tax credits and non-recurring items such as changes in valuation allowances. It is also affected to a lesser extent by tax rates in foreign jurisdictions and the relative amount of income we earn in those jurisdictions, which we expect to be fairly consistent in the near term. Our low effective tax rate is primarily attributable to the valuation allowance we are maintaining on our net deferred tax assets.

We have indefinitely reinvested foreign earnings of \$2.5 million at December 31, 2019. We would need to accrue and pay various taxes on this amount if repatriated. We do not intend to repatriate these earnings.

Liquidity and Capital Resources

Overview

We are proactively seeking opportunities to improve the efficiency of our operations. During the latter half of 2018 we began taking, and during 2019 took, significant steps to realize internal cost savings, including staff reductions in early 2019 and we continue to focus on process streamlining. We continue to seek opportunities for growth, in our retail business and through our Medici and tZERO blockchain and financial technology initiatives and through other means. See "Strategies for our Retail Business," "Strategies for our Medici Business" and "Strategies for our tZERO Business" above. We anticipate that our initiatives may lead to increased consolidated losses in the foreseeable future, and to reduced liquidity. Our ability to pursue some or all of these initiatives and the extent to which we would be able to pursue some or all of them, will depend on the resources we have available, and will require significantly more capital than we currently have. We continue to manage our costs carefully and seek to improve the efficiency of our operations, including through process improvement and added focus on machine learning automation. We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months.

Current sources of liquidity

Our principal sources of liquidity are existing cash and cash equivalents. At December 31, 2019, we had cash and cash equivalents of \$112.3 million. Our ability to access the liquidity of our subsidiaries may be limited by tax and legal considerations and other factors.

Cash flow information is as follows (in thousands):

	Year ended December 31,	
	2019	2018
Cash provided by (used in):		
Operating activities	\$ (81,612)	\$ (138,934)
Investing activities	(26,852)	(110,923)
Financing activities	80,548	189,001

We entered into a Capital on Demand™ Sales agreement dated August 9, 2018 (which was subsequently amended on March 15, 2019 and November 12, 2019) with JonesTrading Institutional Services LLC ("JonesTrading"), under which we conducted "at the market" public offerings of our common stock. Under the sales agreement, JonesTrading, acting as our agent, may offer our common stock in the market on a daily basis or otherwise as we request from time to time. As of December 31, 2019, we had \$115 million remaining available under our "at the market" sales program. We have no obligation to sell additional shares under the sales agreement, but may do so from time to time. Under the amended agreement, we will pay JonesTrading up to a 3.0% sales commission on all sales. For the year ended December 31, 2019, we sold 7,590,498 shares of our common stock pursuant to the sales agreement and have received \$85.8 million in proceeds, including \$2.8 million of proceeds included in Accounts receivable, net on our consolidated balance sheet, net of \$2.0 million of offering costs, including commissions paid to JonesTrading. For the year ended December 31, 2018, we sold 2,883,344 shares of our common stock pursuant to the sales agreement and received \$94.6 million in proceeds, net of \$2.6 million of offering costs, including commissions paid to JonesTrading.

In August 2018, Overstock signed a Token Purchase Agreement with GSR Capital Ltd., a Cayman Islands exempted company ("GSR"), and a term sheet contemplating a sale of Overstock common stock to GSR. Concurrently, tZERO signed a term sheet contemplating a sale of tZERO common stock to GSR.

The Token Purchase Agreement sets forth the terms on which GSR had agreed to purchase, for \$30 million, on May 6, 2019 or such other date as agreed by the parties, security tokens at a price of \$6.67 per security token. On May 8, 2019, the parties executed an Investment Agreement to replace the Token Purchase Agreement under which GSR agreed to purchase 508,710 shares of tZERO common stock, representing approximately 0.5% of the issued and outstanding common stock of tZERO. In exchange, GSR agreed to transfer to tZERO a total \$5.0 million in consideration. On September 16, 2019, in recognition of GSR's remaining obligations under the Investment Agreement, tZERO and GSR entered into a Promissory Note under which GSR promised to pay the remaining consideration due to tZERO under the Investment Agreement in the form of U.S. dollars in multiple installments by December 6, 2019. As of December 31, 2019, GSR had provided \$4.4 million U.S. dollars, which represents principal, interest, and late payment fees pursuant to the Investment Agreement and Promissory Note, and such amount is included in Accrued liabilities. Approximately \$911,000 of principal and accrued interest remained unpaid as of December 31, 2019. tZERO entered into an agreement with GSR in March 2020 under which GSR made a further \$100,000 partial payment on March 5, 2020, with the remaining balance due by March 31, 2020. Under the same agreement, in the event such remaining payment is not made, tZERO will be entitled to retain all amounts previously paid by GSR pursuant to, or in connection with, the Investment Agreement and the Promissory Note as non-exclusive damages, and, notwithstanding any provision of the Investment Agreement or the Promissory Note, tZERO will be relieved of any obligation to issue shares to GSR. Overstock and tZERO also reserve the right to pursue additional rights and remedies they may have.

The previously-announced GSR equity investments in Overstock and tZERO contemplated by the term sheets described above did not occur, and the previously-announced memorandum of understanding in which GSR and Makara Capital would co-lead an investment of up to \$100 million in tZERO common stock did not close in April 2019 as initially expected. Following further discussions, GSR and Makara Capital informed tZERO in the third quarter of 2019 that they would not be pursuing an investment in tZERO pursuant to the memorandum of understanding or under the separate term sheets.

Subsequent to December 31, 2019, we entered into two loan agreements totaling \$47.5 million with Loan Core Capital Funding Corporation LLC. For additional information, see *Borrowings* - below.

Cash flows from operating activities

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us causing our receivables from these sales transactions to settle quickly. We have payment terms with our partners that generally extend beyond the amount of time necessary to collect proceeds from our customers. As a result, following our fourth quarter seasonal sales, at December 31 of each year, our cash, cash equivalents and accounts payable balances normally reach their highest level (other than as a result of cash flows provided by or used in investing and financing activities). However, our accounts payable balance normally declines during the first three months following year-end, which normally results in a decline in our cash and cash equivalents balances from the year-end balance. The seasonality of our business normally causes payables and accruals to grow significantly in the fourth quarter, and then decrease in the first quarter when they are typically paid.

The \$81.6 million of net cash used in operating activities during the year ended December 31, 2019 was primarily from a consolidated net loss of \$134.7 million and cash used by operating assets and liabilities of \$16.7 million, which were partially offset by certain non-cash items including depreciation and amortization expense, and non-cash operating lease costs of \$37.7 million, stock-based compensation of \$18.2 million, losses recognized on equity method securities of \$7.7 million, and impairments recognized on equity securities of \$7.1 million.

The \$138.9 million of net cash used in operating activities during the year ended December 31, 2018 was primarily from a consolidated net loss of \$217.6 million, partially offset by cash provided by operating assets and liabilities of \$19.5 million, and certain non-cash items including depreciation and amortization expense of \$31.7 million, stock-based compensation of \$14.4 million, impairment on intangible assets of \$6.0 million, losses recognized on equity method securities of \$3.9 million, loss on disposal of business and other asset abandonments of \$3.6 million, and impairment losses, net of realized gains, recognized on cryptocurrency holdings of \$2.1 million.

Cash flows from investing activities

The \$26.9 million of net cash used in investing activities during the year ended December 31, 2019 was primarily from expenditures for property and equipment of \$21.8 million and purchases of equity securities of \$12.6 million, partially offset by \$7.3 million in proceeds from the sale of equity securities, \$4.9 million of cash acquired through a business combination that was funded at the end of the fourth quarter of 2018 but closed in the first quarter of 2019, and \$4.7 million disbursement of notes receivable.

The \$110.9 million of net cash used in investing activities during the December 31, 2018 was primarily from purchases of equity securities and marketable securities of \$48.7 million, expenditures for fixed assets of \$28.7 million, acquisitions of businesses, net of cash acquired of \$12.9 million, purchase of intangible assets of \$9.6 million, deposits made in advance of acquisition of \$8.0 million, and disbursements for loans made of \$3.1 million.

Cash flows from financing activities

The \$80.5 million provided by financing activities during the year ended December 31, 2019 resulted primarily from \$83.0 million of net proceeds from sales of our common stock under the at the market offering and \$4.9 million of proceeds from our short-term contract financing, partially offset by \$3.1 million payment on long-term debt, \$1.4 million of payments on our short-term contract financing, and \$1.4 million of taxes withheld upon vesting of restricted stock.

The \$189.0 million provided by financing activities during the year ended December 31, 2018 resulted primarily from \$94.6 million of proceeds from sales of our common stock, \$82.4 million of proceeds from the TZROP offering, \$50.6 million of proceeds from sales and exercises of stock warrants, and \$6.7 million of proceeds from sale of subsidiary shares, partially offset by \$40.0 million of repayments on our PCL term loan and \$4.6 million of taxes withheld upon vesting of restricted stock.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2019 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

Contractual Obligations	Payment due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating leases	\$ 35,552	\$ 8,639	\$ 11,382	\$ 8,170	\$ 7,361
Technology services	2,514	2,514	—	—	—
Total contractual cash obligations	\$ 38,066	\$ 11,153	\$ 11,382	\$ 8,170	\$ 7,361

Operating leases

From time to time we enter into operating leases for facilities and equipment for use in our operations.

Technology services

From time to time we enter into long-term contractual agreements for technology services and finance leases for equipment included in such service agreements.

Off-Balance Sheet Arrangements

As of December 31, 2019, we had a \$5 million contractual off-balance sheet contingent obligation to provide additional funding in the future to our BSTX joint venture if and when, during the first 48 months after the establishment of the entity, the aggregate cash balance of BSTX's combined bank accounts fall below \$2 million for any reason. Such obligation has not been accrued for nor included in the table above as the timing of the resolution of the contingency and payment of such obligation is not determinable as of the balance sheet date.

New loan agreements

Subsequent to December 31, 2019, we entered into two loan agreements totaling \$47.5 million with Loan Core Capital Funding Corporation LLC, which are excluded from the table above. For additional information, see *Borrowings* - below.

Tax contingencies

We are involved in various tax matters, the outcomes of which are uncertain. As of December 31, 2019, and 2018, tax contingencies were \$1.5 million and \$1.5 million, respectively, which are included in our reconciliation of unrecognized tax benefits (see Item 15 of Part IV, "Financial Statements"—Note 18. Income Taxes contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K). We expect the total amount of tax contingencies to decrease in the next 12 months. In addition, changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax contingencies is highly uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities. These assessments may or may not result in changes to our contingencies related to positions on prior years' tax filings.

Borrowings

High Bench Senior Credit Agreement

On June 25, 2018, we became party to a senior credit agreement, as amended, with High Bench-Mac Warehouse-Senior Debt, LLC (the "High Bench Loan"), in connection with our acquisition of Mac Warehouse, LLC. Under the amended agreement, at the time of the acquisition, the loan carried an annual interest rate of 11.0%. During July 2019, we repaid the entire outstanding balance of the High Bench Loan effectively terminating the agreement. For additional information, see Item 15 of Part IV, "Financial Statements"—Note 3. Business Combinations.

Letters of credit

At December 31, 2019 and 2018, letters of credit totaling \$205,000 and \$280,000, respectively, were issued on our behalf collateralized by compensating cash balances held at a bank, which are included in Restricted cash in the accompanying consolidated balance sheets.

Commercial purchasing card agreement

We have a commercial purchasing card (the "Purchasing Card") agreement. We use the Purchasing Card for business purpose purchasing and must pay it in full each month. At December 31, 2019, \$21,000 was outstanding and \$979,000 was available under the Purchasing Card. At December 31, 2018, \$48,000 was outstanding and \$952,000 was available under the Purchasing Card.

Loan Core Capital Funding Corporation LLC loan agreements

In March 2020, we entered into two loan agreements with Loan Core Capital Funding Corporation LLC. The loan agreements provide a \$34.5 million Senior Note and a \$13.0 million Mezzanine Note. The loans carry an annual interest rate of 4.45%. The Senior Note is for a 10-year term and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note is for approximately a 46-month term and requires principal and interest payments monthly over the life of the loan. Both loans are secured by our corporate headquarters and the related land. We incurred insignificant debt issuance costs with the new loan agreements.

Other Factors that May Affect Future Results

We periodically evaluate opportunities to repurchase our equity securities, obtain credit facilities, or issue additional debt or equity securities. In addition, we may, from time to time, consider the investment in, or acquisition of, complementary businesses, products, services, or technologies, any of which might affect our liquidity requirements or cause us to issue additional debt or equity securities. There can be no assurance that financing arrangements will be available in amounts or on terms acceptable to us, if at all. Our future results may be significantly different from our historical results for several other reasons as well, including the possibility discussed in this Annual Report on Form 10-K that we may sell our retail business, which would have a dramatic effect on our future results. Other reasons that our future results may be significantly different from our historical results include the potential effects on us of the accounting and tax changes discussed in this Annual Report on Form 10-K, and other reasons described in Item 1. "Business" under "Our Retail Business" and "Our Medici Business," as well as the risk factors described in Item 1A. "Risk Factors."

Any investment in our securities involves a high degree of risk. Investors should consider carefully the risks and uncertainties described in this Form 10-K, including the risks described in Item 1A of Part I, "Risk Factors", and all other information in this Form 10-K and in our other filings with the SEC including those we file after we file this Form 10-K, before deciding whether to purchase or hold our securities. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also become important factors that may harm our business. The occurrence of any of the risks described under "Risk Factors" in this report could harm our business. The trading price of our securities could decline due to any of these risks and uncertainties, and investors may lose part or all of their investment.

Off-Balance Sheet Arrangements

Refer to Contractual Obligations and Commitments above for discussion regarding our off-balance sheet arrangement.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our financial instruments consist of cash and cash equivalents, trade accounts and contracts receivable, accounts payable and long-term obligations. We consider highly-liquid instruments with a remaining maturity of 90 days or less at the date of purchase to be cash equivalents. We currently do not hold any derivative financial instruments or foreign exchange contracts.

Our exposure to market risk for changes in interest rates relates primarily to our short-term equity securities and marketable securities and short-term obligations; thus, fluctuations in interest rates would not have a material impact on the fair value of these securities. However, the fair values of our equity securities and marketable securities may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions.

At December 31, 2019, we had \$112.3 million in cash and cash equivalents. Hypothetically, an increase or decrease in interest rates of one hundred basis points would have an estimated impact of \$1.1 million on our earnings or loss, or the cash flows of these instruments. This amount represents a decrease in the estimated impact of an increase or decrease in interest rates of one hundred basis points, from \$1.4 million in 2018. At December 31, 2018, we had \$141.5 million in cash and cash equivalents.

At December 31, 2019, letters of credit totaling \$205,000 were outstanding under collateralized compensating cash balances held at our bank. Hypothetically, an increase or decrease in interest rates of one hundred basis points would have an estimated impact of \$2,000 on our earnings or loss if the letters of credit were fully drawn. This amount represents a decrease in the estimated impact of an increase or decrease in interest rates of one hundred basis points, from \$3,000 in 2018, if the letters of credit were fully drawn. At December 31, 2018, letters of credit totaling \$280,000 were outstanding under collateralized compensating cash balances held at our bank.

At December 31, 2019, we had cryptocurrency-denominated assets totaling \$2.6 million. Hypothetically, an increase or decrease in the market value of one hundred basis points would have an estimated impact of \$26,000 on our earnings or loss, or the recorded value of these instruments. This amount represents an increase in the estimated impact of an increase or decrease in the market value of one hundred basis points, from \$24,000 in 2018. At December 31, 2018, we had cryptocurrency-denominated assets totaling \$2.4 million. It is generally not our policy to hold material amounts of cryptocurrency because of volatility and market risk.

At December 31, 2019, our recorded value in equity securities and marketable securities in public and private companies was \$52.4 million compared to \$60.4 million at December 31, 2018. Our equity securities and marketable securities in publicly traded companies represent \$11.1 million of our equity securities and marketable securities as of December 31, 2019, compared to \$2.6 million at December 31, 2018, and are recorded at fair value, which is subject to market price volatility. We perform a qualitative assessment for our equity securities in private companies to identify impairment. If this assessment indicates that an impairment exists, we estimate the fair value of the security and, if the fair value is less than carrying value, we write down the security to fair value. Our assessment includes a review of recent operating results and trends, recent sales/acquisitions of the investee securities, and other publicly available data. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that market sensitivities are not practicable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

<u>Report of Independent Registered Public Accounting Firm</u>	68
<u>Consolidated Balance Sheets</u>	69
<u>Consolidated Statements of Operations</u>	70
<u>Consolidated Statements of Comprehensive Loss</u>	71
<u>Consolidated Statements of Changes in Stockholders' Equity</u>	72
<u>Consolidated Statements of Cash Flows</u>	74
<u>Notes to Consolidated Financial Statements</u>	75
<u>Schedule II Valuation and Qualifying Accounts</u>	110

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Overstock.com, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Overstock.com, Inc. and subsidiaries (the Company) as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes and financial statement schedule II (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 13, 2020 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Change in Accounting Principles

As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2019 due to the adoption of Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) No. 2016-02, *Leases (Topic 842)*, and related amendments.

As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for revenue from contracts with customers as of January 1, 2018 due to the adoption of FASB ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2009.

Salt Lake City, Utah
March 13, 2020

Overstock.com, Inc.
Consolidated Balance Sheets
(in thousands)

	December 31, 2019	December 31, 2018
Assets		
Current assets:		
Cash and cash equivalents	\$ 112,266	\$ 141,512
Restricted cash	2,632	1,302
Marketable securities at fair value	10,308	—
Accounts receivable, net	24,728	35,930
Notes receivable, current	3,111	359
Inventories, net	5,840	14,108
Prepays and other current assets	18,478	22,056
Total current assets	177,363	215,267
Property and equipment, net	130,028	134,687
Intangible assets, net	11,756	13,370
Goodwill	27,120	22,895
Equity securities	42,043	60,427
Operating lease right-of-use assets	25,384	—
Other long-term assets, net	4,033	14,573
Total assets	\$ 417,727	\$ 461,219
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 75,416	\$ 102,574
Accrued liabilities	88,197	87,858
Deferred revenue	41,821	50,578
Operating lease liabilities, current	6,603	—
Other current liabilities	3,962	476
Total current liabilities	215,999	241,486
Long-term debt, net	—	3,069
Operating lease liabilities, non-current	21,554	—
Other long-term liabilities	2,319	5,958
Total liabilities	239,872	250,513
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value, authorized shares - 5,000		
Series A, issued and outstanding - 0 and 127	—	—
Series A-1, issued and outstanding - 4,210 and 0 (including 4,085 shares declared as a stock dividend, not yet distributed)	—	—
Series B, issued and outstanding - 357 and 355	—	—
Common stock, \$0.0001 par value, authorized shares - 100,000		
Issued shares - 42,790 and 35,346		
Outstanding shares - 39,464 and 32,146	4	3
Additional paid-in capital	764,845	657,981
Accumulated deficit	(580,390)	(458,897)
Accumulated other comprehensive loss	(568)	(584)
Treasury stock at cost - 3,326 and 3,200	(68,807)	(66,757)
Equity attributable to stockholders of Overstock.com, Inc.	115,084	131,746
Equity attributable to noncontrolling interests	62,771	78,960
Total stockholders' equity	177,855	210,706
Total liabilities and stockholders' equity	\$ 417,727	\$ 461,219

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Operations
(in thousands, except per share data)

	Year Ended December 31,		
	2019	2018	2017
Revenue, net			
Retail	\$ 1,434,974	\$ 1,800,187	\$ 1,728,104
Other	24,444	21,405	16,652
Total net revenue	1,459,418	1,821,592	1,744,756
Cost of goods sold			
Retail	1,147,025	1,452,195	1,392,558
Other	19,300	15,489	11,647
Total cost of goods sold	1,166,325	1,467,684	1,404,205
Gross profit	293,093	353,908	340,551
Operating expenses:			
Sales and marketing	143,120	274,479	180,589
Technology	135,338	132,154	115,878
General and administrative	138,124	164,481	90,718
Total operating expenses	416,582	571,114	387,185
Operating loss	(123,489)	(217,206)	(46,634)
Interest income	1,797	2,208	659
Interest expense	(342)	(1,468)	(2,937)
Other income (expense), net	(12,501)	(3,488)	1,178
Loss before income taxes	(134,535)	(219,954)	(47,734)
Provision (benefit) from income taxes	185	(2,384)	64,188
Consolidated net loss	\$ (134,720)	\$ (217,570)	\$ (111,922)
Less: Net loss attributable to noncontrolling interests	(12,879)	(11,500)	(2,044)
Net loss attributable to stockholders of Overstock.com, Inc.	<u>\$ (121,841)</u>	<u>\$ (206,070)</u>	<u>\$ (109,878)</u>
Net loss per common share—basic:			
Net loss attributable to common shares—basic:	\$ (3.46)	\$ (6.83)	\$ (4.28)
Weighted average common shares outstanding—basic	34,865	29,976	25,044
Net loss per common share—diluted:			
Net loss attributable to common shares—diluted:	\$ (3.46)	\$ (6.83)	\$ (4.28)
Weighted average common shares outstanding—diluted	34,865	29,976	25,044

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Comprehensive Loss
(in thousands)

	Year Ended December 31,		
	2019	2018	2017
Consolidated net loss	\$ (134,720)	\$ (217,570)	\$ (111,922)
Other comprehensive income:			
Unrealized gain on cash flow hedges, net of benefit (expense) for taxes of \$0, \$0 and \$(689)	16	15	941
Other comprehensive income	16	15	941
Comprehensive loss	\$ (134,704)	\$ (217,555)	\$ (110,981)
Less: Comprehensive loss attributable to noncontrolling interests	(12,879)	(11,500)	(2,044)
Comprehensive loss attributable to stockholders of Overstock.com, Inc.	<u>\$ (121,825)</u>	<u>\$ (206,055)</u>	<u>\$ (108,937)</u>

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity
(in thousands, except per share data)

	Year Ended December 31,		
	2019	2018	2017
Equity attributable to stockholders of Overstock.com, Inc.			
Number of common shares issued			
Balance at beginning of year	35,346	30,632	27,895
Common stock issued upon vesting of restricted stock	270	234	212
Common stock issued for asset purchase	—	147	—
Exercise of stock options	—	—	39
Exercise of stock warrants	—	1,250	2,472
Common stock sold through ATM offering	7,174	2,883	—
Other	—	200	14
Balance at end of year	42,790	35,346	30,632
Number of treasury stock shares			
Balance at beginning of year	3,200	3,135	2,463
Tax withholding upon vesting of restricted stock	79	65	68
Purchases of treasury stock	—	—	604
Common stock repurchased through business combination	47	—	—
Balance at end of year	3,326	3,200	3,135
Total number of outstanding shares	39,464	32,146	27,497
Common stock			
Balance at beginning of year	\$ 3	\$ 3	\$ 3
Common stock sold through ATM offering	1	—	—
Balance at end of year	\$ 4	\$ 3	\$ 3
Number of Series A preferred shares issued and outstanding			
Balance at beginning of year	127	127	127
Exchange of shares to Series A-1	(125)	—	—
Conversion of shares to Series B	(2)	—	—
Balance at end of year	—	127	127
Number of Series A-1 preferred shares issued and outstanding			
Balance at beginning of year	—	—	—
Exchange of shares from Series A	125	—	—
Dividend declared, not yet distributed	4,085	—	—
Balance at end of year	4,210	—	—
Number of Series B preferred shares issued and outstanding			
Balance at beginning of year	355	555	569
Conversion of shares from Series A	2	—	—
Other	—	(200)	(14)
Balance at end of year	357	355	555
Preferred stock	\$ —	\$ —	\$ —

Continued on the following page

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity
(in thousands, except per share data)

	Year Ended December 31,		
	2019	2018	2017
Additional paid-in capital			
Balance at beginning of year	\$ 657,981	\$ 494,732	\$ 383,348
Stock-based compensation to employees and directors	18,229	10,316	4,077
Common stock issued for asset purchase	—	4,430	—
Exercise of stock options	—	—	664
Issuance and exercise of stock warrants	—	50,588	106,462
Common stock sold through ATM offering, net	85,801	94,554	—
Other	2,834	3,361	181
Balance at end of year	\$ 764,845	\$ 657,981	\$ 494,732
Accumulated deficit			
Balance at beginning of year	\$ (458,897)	\$ (254,692)	\$ (153,898)
Cumulative effect of change in accounting principle	—	5,040	9,374
Net loss attributable to stockholders of Overstock.com, Inc.	(121,841)	(206,070)	(109,878)
Declaration and payment of preferred dividends	(77)	(77)	(109)
Other	425	(3,098)	(181)
Balance at end of year	\$ (580,390)	\$ (458,897)	\$ (254,692)
Accumulated other comprehensive loss			
Balance at beginning of year	\$ (584)	\$ (599)	\$ (1,540)
Net other comprehensive income	16	15	941
Balance at end of year	\$ (568)	\$ (584)	\$ (599)
Treasury stock			
Balance at beginning of year	\$ (66,757)	\$ (63,816)	\$ (52,587)
Tax withholding upon vesting of restricted stock	(1,407)	(2,941)	(1,229)
Common stock repurchased through business combination	(643)	—	—
Purchases of treasury stock	—	—	(10,000)
Balance at end of year	(68,807)	(66,757)	(63,816)
Total equity attributable to stockholders of Overstock.com, Inc.	\$ 115,084	\$ 131,746	\$ 175,628
Equity attributable to noncontrolling interests			
Balance at beginning of year	\$ 78,960	\$ (3,505)	\$ (2,366)
Proceeds from security token offering, net	—	82,354	905
Stock-based compensation to employees and directors	—	4,040	—
Tax withholding upon vesting of restricted stock	—	(1,681)	—
Paid in capital for noncontrolling interest	—	5,932	—
Fair value of noncontrolling interest at acquisition	—	4,468	—
Net loss attributable to noncontrolling interests	(12,879)	(11,500)	(2,044)
Other	(3,310)	(1,148)	—
Total equity attributable to noncontrolling interests	\$ 62,771	\$ 78,960	\$ (3,505)
Total stockholders' equity	\$ 177,855	\$ 210,706	\$ 172,123

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Cash Flows
(in thousands)

	Year ended December 31,		
	2019	2018	2017
Cash flows from operating activities:			
Consolidated net loss	\$ (134,720)	\$ (217,570)	\$ (111,922)
Adjustments to reconcile consolidated net loss to net cash used in operating activities:			
Depreciation of property and equipment	26,262	26,411	28,848
Amortization of intangible assets	4,769	5,286	3,999
Non-cash operating lease cost	6,676	—	—
Stock-based compensation to employees and directors	18,229	14,356	4,077
Deferred income taxes, net	(69)	(2,386)	65,199
Gain on investment in precious metals	—	—	(1,971)
Gain on sale of cryptocurrencies	(569)	(8,370)	(1,995)
Impairment of cryptocurrencies	334	10,463	—
Impairment of equity securities	7,090	536	5,487
Losses on equity method securities	7,734	3,869	508
Loss on disposal of business and other asset abandonments	—	3,565	—
Impairments on intangible assets	1,406	6,000	—
Other non-cash adjustments	(2,037)	(583)	2,832
Changes in operating assets and liabilities, net of acquisitions:			
Accounts receivable, net	13,385	(5,558)	(1,938)
Inventories, net	8,268	628	5,234
Prepays and other current assets	5,956	(3,622)	(2,799)
Other long-term assets, net	(660)	(2,870)	(2,307)
Accounts payable	(27,158)	16,499	(20,995)
Accrued liabilities	(281)	5,661	(12,311)
Deferred revenue	(8,757)	9,150	4,688
Operating lease liabilities	(8,013)	—	—
Other long-term liabilities	543	(399)	145
Net cash used in operating activities	(81,612)	(138,934)	(35,221)
Cash flows from investing activities:			
Proceeds from sale of precious metals	—	—	11,917
Purchase of intangible assets	—	(9,597)	(423)
Purchase of equity securities	(12,641)	(48,731)	(5,188)
Proceeds from sale of equity securities and marketable securities	7,339	—	—
Disbursement for notes receivable	(4,715)	(3,059)	(750)
Acquisitions of businesses, net of cash acquired	4,886	(12,912)	—
Deposit on purchase of a business	—	(8,000)	—
Expenditures for property and equipment	(21,774)	(28,680)	(23,586)
Other investing activities, net	53	56	70
Net cash used in investing activities	(26,852)	(110,923)	(17,960)

Continued on the following page

	Year ended December 31,		
	2019	2018	2017
Cash flows from financing activities:			
Payments on finance obligations	—	—	(15,316)
Payments on interest swap	—	—	(1,535)
Payment on long-term debt	(3,141)	(40,000)	(45,766)
Proceeds under short-term contract financing	4,858	—	—
Payments under short-term contract financing	(1,353)	—	—
Proceeds from long-term debt	—	—	40,000
Payments of preferred dividends	(77)	(77)	(109)
Proceeds from issuance and exercise of stock warrants	—	50,588	106,462
Proceeds from exercise of stock options	—	—	664
Proceeds from security token offering, net of offering costs and withdrawals	—	82,354	905
Proceeds from sale of common stock, net of offering costs	82,954	94,554	—
Paid in capital for noncontrolling interest	—	6,700	—

Purchase of treasury stock	—	—	(10,000)
Payments of taxes withheld upon vesting of restricted stock	(1,407)	(4,622)	(1,229)
Payment of debt issuance costs	—	—	(670)
Other financing activities, net	(1,286)	(496)	(83)
Net cash provided by financing activities	80,548	189,001	73,323
Net increase (decrease) in cash and cash equivalents	(27,916)	(60,856)	20,142
Cash, cash equivalents and restricted cash, beginning of year	142,814	203,670	183,528
Cash, cash equivalents and restricted cash, end of year	<u>\$ 114,898</u>	<u>\$ 142,814</u>	<u>\$ 203,670</u>

Supplemental disclosures of cash flow information:

Cash paid during the period:

Interest paid, net of amounts capitalized	\$ 264	\$ 1,319	\$ 2,940
Income taxes paid (refunded), net	(1,259)	(726)	487

Non-cash investing and financing activities:

Property and equipment financed through accounts payable and accrued liabilities	\$ 350	\$ 139	\$ 989
Equipment acquired under capital lease obligations	—	—	1,421
Proceeds from sale of common stock included in accounts receivable	2,848	—	—
Acquisition of assets through stock issuance	—	4,430	—
Change in fair value of cash flow hedge	—	—	(1,738)
Common stock repurchased through business combination	643	—	—
Receivables converted to equity securities	2,887	200	1,368
Deposit applied to business combination purchase price	7,347	—	—
Equity method security applied to business combination purchase price	3,800	—	—
Recognition of right-of-use assets upon adoption of ASC 842	30,968	—	—

See accompanying notes to consolidated financial statements.

1. BASIS OF PRESENTATION

Business and organization

As used herein, "Overstock," "Overstock.com," "we," "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise. We were formed on May 5, 1997 as D2-Discounts Direct, a limited liability company ("LLC"). On December 30, 1998, we were reorganized as a C Corporation in the State of Utah and reincorporated in Delaware in May 2002. On October 25, 1999, we changed our name to Overstock.com, Inc.

We are an online retailer and advancer of blockchain technology. Through our online retail business, we offer a broad range of price-competitive products, including furniture, home decor, bedding and bath, and housewares, among other products. We sell our products and services through our Internet websites located at www.overstock.com, www.o.co and www.o.biz (referred to collectively as the "Website"). Although our three websites are located at different domain addresses, the technology, equipment, and processes supporting the Website and the process of order fulfillment described herein are the same for all three websites.

In late 2014, we began working on initiatives to develop and advance blockchain technology, which initiatives we refer to collectively as Medici. Our Medici business initiatives seek to leverage the security, transparency and immutability of cryptographically protected and distributed ledgers, such as blockchains, and are focused on solving important problems, including financial transaction issues, particularly in the area of securities settlement. Our Medici business initiatives include our wholly-owned subsidiary, Medici Ventures, Inc. ("Medici Ventures"), which conducts a majority of its business through its majority-owned subsidiary tZERO Group, Inc. ("tZERO"), formerly tØ.com, Inc., a financial technology company pursuing potential financial applications of blockchain technologies as well as non-blockchain businesses. Medici Ventures currently holds equity interests in several technology companies whose focuses include commercial blockchain applications for identity and social media, property and land, money and banking, capital markets, supply chain, and voting.

Basis of presentation

We have prepared the accompanying consolidated financial statements pursuant to generally accepted accounting principles in the United States ("GAAP"). Preparing financial statements requires us to make estimates and assumptions that affect the amounts that are reported in the consolidated financial statements and accompanying disclosures. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, our actual results may be different from our estimates. The results of operations presented herein are not necessarily indicative of our results for any future period.

For purposes of comparability, we reclassified certain immaterial amounts in the prior periods presented to conform with the current year presentation.

2. ACCOUNTING POLICIES

Principles of consolidation

The accompanying consolidated financial statements include our accounts and the accounts of our wholly-owned subsidiaries and subsidiaries for which we exercise control. All intercompany account balances and transactions have been eliminated in consolidation. Included in our consolidated financial statements are the financial results of Bitsy, Inc. from the acquisition date of January 1, 2019, Verify Investor, LLC from the date of acquisition on February 12, 2018, and Mac Warehouse, LLC from the date of acquisition on June 25, 2018.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in our consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, receivables valuation, revenue recognition, Club O and gift card breakage, sales returns, vendor incentive discount offers,

inventory valuation, depreciable lives of fixed assets and internally-developed software, goodwill valuation, intangible asset valuation, equity security valuation, income taxes, stock-based compensation, performance-based compensation, self-funded health insurance liabilities, and contingencies. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, actual results could differ materially from these estimates.

Cash equivalents

We classify all highly liquid instruments, including instruments with a remaining maturity of three months or less at the time of purchase, as cash equivalents. Cash equivalents were \$2.8 million and \$3.1 million at December 31, 2019 and 2018, respectively.

Restricted cash

We consider cash that is legally restricted and cash that is held as compensating balances for credit arrangements as restricted cash.

Fair value of financial instruments

We account for our assets and liabilities using a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our market assumptions. These two types of inputs have created the fair-value hierarchy below. This hierarchy requires us to minimize the use of unobservable inputs and to use observable market data, if available, when determining fair value.

- Level 1—Quoted prices for identical instruments in active markets;
- Level 2—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and
- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Our assets and liabilities that are adjusted to fair value on a recurring basis are cash equivalents, certain equity securities, and deferred compensation liabilities, which fair values are determined using quoted market prices from daily exchange traded markets on the closing price as of the balance sheet date and are classified as Level 1. Our other financial instruments, including cash, restricted cash, accounts receivable, accounts payable, accrued liabilities, finance obligations, and debt are carried at cost, which approximates their fair value. Certain assets, including long-lived assets, certain equity securities, goodwill, cryptocurrencies, and other intangible assets, are measured at fair value on a nonrecurring basis; that is, the assets are not measured at fair value on an ongoing basis, but are subject to fair value adjustments using fair value measurements with unobservable inputs (level 3), apart from cryptocurrencies which use quoted prices from various digital currency exchanges with active markets, in certain circumstances (e.g., when there is evidence of impairment).

The following tables summarize our assets and liabilities measured at fair value on a recurring basis using the following levels of inputs as of December 31, 2019 and 2018, as indicated (in thousands):

	Fair Value Measurements at December 31, 2019			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents—Money market mutual funds	\$ 2,799	\$ 2,799	\$ —	\$ —
Investment in equity securities, at fair value	823	823	—	—
Investment in marketable securities, at fair value	10,308	10,308	—	—
Trading securities held in a "rabbi trust" (1)	116	116	—	—
Total assets	<u>\$ 14,046</u>	<u>\$ 14,046</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	\$ 116	\$ 116	\$ —	\$ —
Total liabilities	<u>\$ 116</u>	<u>\$ 116</u>	<u>\$ —</u>	<u>\$ —</u>

	Fair Value Measurements at December 31, 2018			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents—Money market mutual funds	\$ 3,135	\$ 3,135	\$ —	\$ —
Investment in equity securities, at fair value	2,636	2,636	—	—
Trading securities held in a "rabbi trust" (1)	84	84	—	—
Total assets	\$ 5,855	\$ 5,855	\$ —	\$ —
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	85	85	—	—
Total liabilities	\$ 85	\$ 85	\$ —	\$ —

- (1) — Trading securities held in a rabbi trust are included in Prepaids and other current assets and Other long-term assets, net in the consolidated balance sheets.
- (2) — Non-qualified deferred compensation in a rabbi trust is included in Accrued liabilities and Other long-term liabilities in the consolidated balance sheets.

Accounts receivable, net

Accounts receivable consist primarily of carrier rebates, trade amounts due from customers in the United States, and uncleared credit card transactions at period end. Accounts receivable are recorded at invoiced amounts and do not bear interest. From time to time, we grant credit to some of our business customers on normal credit terms (typically 30 days). We maintain an allowance for doubtful accounts receivable based upon our business customers' financial condition and payment history, and our historical collection experience and expected collectability of accounts receivable. The allowance for doubtful accounts receivable was \$2.5 million and \$2.1 million at December 31, 2019 and 2018, respectively.

Concentration of credit risk

At December 31, 2019 and 2018, one bank held the majority of our cash and cash equivalents. Our cash equivalents primarily consist of money market securities which are uninsured. We do not believe that, as a result of this concentration, we are subject to any unusual financial risk beyond the normal risk associated with commercial banking relationships.

Inventories, net

Inventories, net include merchandise purchased for resale which are accounted for using a standard costing system which approximates the first-in-first-out ("FIFO") method of accounting and are valued at the lower of cost and net realizable value. Inventory valuation requires us to make judgments, based on currently available information, about the likely method of disposition, such as through sales to individual customers, returns to product vendors, liquidations, and expected recoverable values of each disposition category.

Prepaids and other current assets

Prepaids and other current assets represent expenses paid prior to receipt of the related goods or services, including advertising, license fees, maintenance, packaging, insurance, prepaid inventories, other miscellaneous costs, and cryptocurrency-denominated assets ("cryptocurrencies"). See *Cryptocurrencies* below.

Cryptocurrencies

We hold cryptocurrency-denominated assets ("cryptocurrencies") such as bitcoin and we include them in Prepaids and other current assets in our consolidated balance sheets. Our cryptocurrencies were \$2.6 million and \$2.4 million at December 31, 2019 and 2018, respectively, and are recorded at cost less impairment.

We recognize impairment on these assets caused by decreases in market value, determined by taking quoted prices from various digital currency exchanges with active markets, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. See *Fair value of financial instruments* above. Such impairment in the value of our cryptocurrencies is recorded in General and administrative expense in our consolidated statements of operations.

Impairments on cryptocurrencies were \$334,000, \$10.5 million, and \$0 during the years ended December 31, 2019, 2018 and 2017, respectively.

Gains and losses realized upon sale of cryptocurrencies are also recorded in General and administrative expense in our consolidated statements of operations. We occasionally use our cryptocurrencies to purchase other cryptocurrencies. Gains and losses realized with these non-cash transactions are also recorded in General and administrative expense in our consolidated statements of operations. These non-cash transactions as well as gains (losses) from cryptocurrencies received through tZERO's offering of tZERO's Preferred Equity Tokens, Series A ("TZROP") are also presented as an adjustment to reconcile Consolidated net loss to Net cash used in operating activities in our consolidated statements of cash flows. Further, the proceeds from the sale of cryptocurrencies received through tZERO's offering of TZROP are presented as a financing activity in our consolidated statements of cash flows due to its near immediate conversion into cash and its economic similarity to the receipt of cash proceeds under tZERO's offering of TZROP. Realized gains on sale of cryptocurrencies were \$569,000, \$8.4 million, and \$0 during the years ended December 31, 2019, 2018, and 2017, respectively.

Property and equipment, net

Property and equipment are recorded at cost and stated net of depreciation and amortization. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the related assets or the term of the related finance lease, whichever is shorter, as follows:

	Life (years)
Building	40
Land improvements	20
Building machinery and equipment	15-20
Furniture and equipment	5-7
Computer hardware	3-4
Computer software, including internal-use software and website development	2-4

Leasehold improvements are amortized over the shorter of the term of the related leases or estimated useful lives.

Included in property and equipment is the capitalized cost of internal-use software and website development, including software used to upgrade and enhance our Website and processes supporting our business. We capitalize costs incurred during the application development stage of internal-use software and amortize these costs over the estimated useful life. Costs incurred related to design or maintenance of internal-use software are expensed as incurred.

During the years ended December 31, 2019, 2018, and 2017, we capitalized \$13.0 million, \$19.3 million, and \$9.6 million, respectively, of costs associated with internal-use software and website development, both developed internally and acquired externally. Depreciation of internal-use software and website development for the years ended December 31, 2019, 2018, and 2017 was \$12.9 million, \$13.8 million, and \$15.9 million, respectively.

Depreciation expense is classified within the corresponding operating expense categories in the consolidated statements of operations as follows (in thousands):

	Year ended December 31,		
	2019	2018	2017
Cost of goods sold—retail	\$ 687	\$ 354	\$ 307
Technology	20,798	21,894	24,604
General and administrative	4,777	4,163	3,937
Total depreciation	<u>\$ 26,262</u>	<u>\$ 26,411</u>	<u>\$ 28,848</u>

Upon sale or retirement of assets, cost and related accumulated depreciation and amortization are removed from the balance sheet and the resulting gain or loss is reflected in our consolidated statements of operations.

Equity securities and marketable securities under ASC 321

At December 31, 2019, we held minority interests (less than 20%) in certain public and privately held entities, accounted for under ASC Topic 321, *Investments—Equity Securities* ("ASC 321"), which are included in Equity securities and Marketable securities in our consolidated balance sheets. We measure our ASC 321 equity securities and marketable securities at fair value, unless there is no readily determinable fair value for the underlying security. Where there is no readily determinable fair value, we have elected the measurement alternative described in ASC 321 and below. Dividends received are reported in earnings if and when received. We review our securities individually for impairment by evaluating if events or circumstances have occurred that may indicate the fair value of the security is less than its carrying value. If such events or circumstances have occurred, we estimate the fair value of the security and recognize an impairment loss equal to the difference between the fair value of the security and its carrying value which is recorded in Other income (expense), net in our consolidated statements of operations. In such cases, the estimated fair value of the security is determined using unobservable inputs including assumptions by the investee's management including quantitative information such as lower valuations in recently completed or proposed financings. These inputs are classified as Level 3. Because several of these private companies are in the early startup or development stages, these entities are subject to potential changes in cash flows, valuation, as well as inability to raise additional capital which may be necessary for the liquidity needed to support their operations.

Certain of our equity securities lack readily determinable fair values and therefore the securities are measured at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or similar equity securities of the same issuer. The carrying amount of our equity securities without readily determinable fair values was approximately \$3.9 million and \$17.7 million at December 31, 2019 and 2018, respectively. Cumulative downward adjustments for price changes and impairments for our equity securities without readily determinable fair values held at December 31, 2019 were \$6.2 million, and the cumulative upward adjustments for price changes to equity securities were \$958,000 as of December 31, 2019. The impairments and downward adjustments for the period related to equity securities without readily determinable fair values at December 31, 2019, 2018 and 2017 is as follows (in thousands):

	Year ended December 31,		
	2019	2018	2017
Impairments and downward adjustments of equity securities without readily determinable fair values	\$ (5,708)	\$ (536)	\$ (5,487)
Upward adjustments of equity securities without readily determinable fair values	\$ —	\$ 958	\$ —

Certain of these equity securities and our marketable securities, which had a carrying value of \$11.1 million at December 31, 2019 and \$2.6 million at December 31, 2018, respectively, are carried at fair value based on Level 1 inputs. See *Fair value of financial instruments* above. The portion of unrealized gains and losses for the period related to equity securities with readily determinable fair value still held at December 31, 2019, 2018 and 2017 is as calculated as follows (in thousands):

	Year ended December 31,		
	2019	2018	2017
Net gains recognized during the period on equity securities and marketable securities	\$ 3,336	\$ 136	\$ —
Less: Net gains recognized during the period on equity securities and marketable securities sold	848	—	—
Unrealized gains recognized during the reporting period on equity securities and marketable securities still held at the reporting period	\$ 2,488	\$ 136	\$ —

Equity securities accounted for under the equity method under ASC 323

At December 31, 2019, we held minority interests in privately held entities, accounted for under the equity method under ASC Topic 323, *Investments—Equity Method and Joint Ventures* ("ASC 323"), which are included in Equity securities in our consolidated balance sheets. We can exercise significant influence, but not control, over these entities through either holding more than a 20% voting interest in the entity or through our representation on the entity's board of directors. For certain of these entities, we provide developer services. For the years ended December 31, 2019, 2018 and 2017 we recognized \$2.7 million, \$2.4 million and \$159,000 of developer service revenue, respectively, in Other revenue on our consolidated statements of operations.

The following table includes our equity securities accounted for under the equity method and related ownership interest as of December 31, 2019:

	Ownership interest
Bitt Inc.	21%
Boston Security Token Exchange LLC	50%
Chainstone Labs, Inc.	29%
FinClusive Capital, Inc.	10%
GrainChain, Inc.	18%
Minds, Inc.	24%
PeerNova, Inc.	11%
SettleMint NV	29%
Spera, Inc.	19%
VinX Network Ltd.	29%
Voatz, Inc.	20%

Based on the nature of our ownership interests and the extent of our contributed capital, we have variable interests in certain of these entities. However, we have insufficient voting rights or other means to influence the investee such that we do not have power to direct the investee's activities that most significantly impact the economic performance of each entity. Further, we are not the investee's primary beneficiary and we therefore do not consolidate the investee in our financial statements. Our investments, plus any loans, off-balance sheet commitments, and other subordinated financial support related to these variable interest entities totaled \$24.2 million and \$25.9 million as of December 31, 2019 and 2018, respectively, representing our maximum exposures to loss.

The carrying amount of our equity method securities was approximately \$37.3 million and \$40.1 million at December 31, 2019 and 2018, respectively. The carrying value of our equity method securities exceeded the amount of the underlying equity in net assets of our equity method securities and the difference was primarily related to goodwill and the fair value of intangible assets. The basis difference attributable to amortizable intangible assets is amortized over their estimated useful lives. We record our proportionate share of the net income or loss from our equity method securities and the amortization of the basis difference related to intangible assets in Other income (expense), net in our consolidated statements of operations with corresponding adjustments to the carrying value of the asset. We review our securities individually for impairment by evaluating if events or circumstances have occurred that may indicate the fair value of the security is less than its carrying value. If such events or circumstances have occurred, we estimate the fair value of the security and recognize an impairment loss equal to the difference between the fair value of the security and its carrying value which is recorded in Other income (expense), net in our consolidated statements of operations.

The following table summarizes the net losses recognized on equity method securities recorded in Other income (expense), net in our consolidated statements of operations for the years ended December 31, 2019, 2018 and 2017 (in thousands):

	Year ended December 31,		
	2019	2018	2017
Net loss recognized on our proportionate share of the net losses of our equity method securities and amortization of the basis difference	\$ 7,734	\$ 3,869	\$ 508
Impairments on equity method securities	1,382	—	—
Net loss recognized during the period on equity method securities sold	524	—	—

Noncontrolling interests

Our wholly-owned subsidiary, Medici Ventures, Inc. ("Medici Ventures"), conducts its primary business through its majority-owned subsidiaries, tZERO Group, Inc. ("tZERO"), formerly tØ.com, Inc., which includes a financial technology company, two related registered broker-dealers, an accredited investor verification company, and certain strategic interests in other entities which support or align with tZERO's objectives and strategies, and Medici Land Governance Inc. ("MLG"). Medici Ventures, tZERO, MLG, and their respective consolidated subsidiaries are included in our consolidated financial statements. Intercompany transactions have been eliminated and the amounts of contributions and gains or losses that are attributable to the noncontrolling interests are disclosed in our consolidated financial statements.

Leases

We determine if an arrangement is a lease at inception. We account for lease agreements as either operating or finance leases depending on certain defined criteria. Operating leases are recognized in Operating lease right-of-use ("ROU") assets, Operating lease liabilities, current, and Operating lease liabilities, non-current on our consolidated balance sheets. Finance leases are included in Other long-term assets, net, Other current liabilities, and Other long-term liabilities on our consolidated balance sheets. Lease assets and liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at commencement date in determining the present value of future payments. In certain of our lease agreements, we receive rent holidays and other incentives. We recognize lease costs on a straight-line basis over the lease term without regard to deferred payment terms, such as rent holidays, that defer the commencement date of required payments. Our lease terms may include options to extend or terminate the lease, and we adjust our measurement of the lease when it is reasonably certain that we will exercise that option. Lease payments used in measurement of the lease liability typically do not include executory costs, such as taxes, insurance, and maintenance, unless those costs can be reasonably estimated at lease commencement. Leasehold improvements are capitalized at cost and amortized over the lesser of their expected useful life or the life of the lease, without assuming renewal features, if any, are exercised. We do not separate lease and non-lease components for our leases.

Treasury stock

We account for treasury stock of our common shares under the cost method and include treasury stock as a component of stockholders' equity.

Goodwill

Goodwill represents the excess of the purchase price paid over the fair value of the net assets acquired in business combinations (See Note 3. Business Combinations). Goodwill is not amortized but is tested for impairment at least annually or when we deem that a triggering event has occurred. When evaluating whether goodwill is impaired, we make a qualitative assessment to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the qualitative assessment determines that it is more likely than not that its fair value is less than its carrying amount, we compare the fair value of the reporting unit to which the goodwill is assigned to its carrying amount. If the carrying amount exceeds its fair value, an impairment loss is recognized in an amount equal to the excess of the carrying amount over the fair value of the reporting unit, not to exceed the carrying amount of the goodwill. There were no impairments to goodwill recorded during the years ended December 31, 2019, 2018 and 2017.

The following table provides information about changes in the carrying amount of goodwill for the periods presented (in thousands):

	Amount
Balances as of December 31, 2017 (1)	\$ 14,698
Goodwill acquired during year	8,197
Balances as of December 31, 2018 (2)	22,895
Goodwill acquired during year	1,685
Purchase price adjustment	2,540
Balances as of December 31, 2019 (3)	\$ 27,120

(1), (2), (3) — Goodwill is net of accumulated impairment loss and other adjustments of \$3.3 million.

Intangible assets other than goodwill

We capitalize and amortize intangible assets other than goodwill over their estimated useful lives unless such lives are indefinite. Intangible assets other than goodwill acquired separately from third-parties are capitalized at cost while such assets acquired as part of a business combination are capitalized at their acquisition-date fair value. Definite lived intangible assets are amortized using the straight-line method of amortization over their useful lives, with the exception of certain intangibles (such as acquired technology, customer relationships, and trade names) which are amortized using an accelerated method of amortization based on cash flows. These definite lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable as described below under *Impairment of long-lived assets*.

Intangible assets, net consist of the following (in thousands):

	December 31,	
	2019	2018
Intangible assets subject to amortization, gross (1)	\$ 30,284	\$ 29,099
Less: accumulated amortization of intangible assets subject to amortization	(18,528)	(15,729)
Total intangible assets, net	\$ 11,756	\$ 13,370

(1) — At December 31, 2019, the weighted average remaining useful life for intangible assets subject to amortization was 5.55 years.

Amortization of intangible assets other than goodwill is classified within the corresponding operating expense categories in our consolidated statements of operations as follows (in thousands):

	Year ended December 31,		
	2019	2018	2017
Technology	\$ 3,726	\$ 3,424	\$ 3,620
Sales and marketing	64	460	83
General and administrative	(458)	1,402	296
Total amortization	\$ 3,332	\$ 5,286	\$ 3,999

General and administrative amortization above was net of reversals due to adjustments to the purchase price allocation for Mac Warehouse, as further described in Note 3. Business Combinations.

Estimated amortization expense for the next five years is: \$3.7 million in 2020, \$3.3 million in 2021, \$2.1 million in 2022, \$1.6 million in 2023, \$804,000 in 2024 and \$323,000 thereafter.

Impairment of long-lived assets

We review property and equipment, right-of-use assets, and other long-lived assets, including intangible assets other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. See the *Cryptocurrencies* section above for our impairment policy over cryptocurrencies. Recoverability is measured by comparison of the assets' carrying amount to future undiscounted net cash flows the asset group is expected to generate. Cash flow forecasts are based on trends of historical performance and management's estimate of future performance, giving consideration to existing and anticipated competitive and economic conditions. If such asset group is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair values.

For the year ended December 31, 2019, we realized a \$1.4 million impairment loss included in General and administrative expense in our consolidated statements of operations related to certain patents held by our Medici Ventures segment. The estimated fair value of the patents were determined based on Level 3 inputs, which were unobservable (see the *Fair value of financial instruments* section above), including market participant assumptions for similar assets in an inactive market. For the year ended December 31, 2018, we realized a \$6.0 million loss included in General and administrative expense in our consolidated statements of operations related to certain patents held by our Medici Ventures segment. The estimated fair value of the patents were determined based on Level 3 inputs, which were unobservable (see the *Fair value of financial instruments* section above), including market participant assumptions for similar assets in an inactive market. In conjunction

with our annual assessment, we concluded the remaining useful life of these licenses were zero based on current contractual arrangements. There were no impairments to long-lived assets recorded during the year ended December 31, 2017.

Other long-term assets, net

Other long-term assets, net consist primarily of long-term prepaid expenses, deposits, and assets acquired under finance leases.

Revenue recognition

Revenue is recognized when, or as, control of a promised product or service transfers to a customer, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring those products or services. Revenue excludes taxes that have been assessed by governmental authorities and that are directly imposed on revenue-producing transactions between the Company and its customers, including sales and use taxes. Revenue recognition is evaluated through the following five-step process:

- 1) identification of the contract with a customer;
- 2) identification of the performance obligations in the contract;
- 3) determination of the transaction price;
- 4) allocation of the transaction price to the performance obligations in the contract; and
- 5) recognition of revenue when or as a performance obligation is satisfied.

Product Revenue

We derive our revenue primarily from our retail business through our Website but may also derive revenue from sales of merchandise through offline and other channels. Our Retail revenue is derived primarily from merchandise sold at a point in time and shipped to customers. Merchandise sales are fulfilled with inventory sourced through our partners or from our owned inventory, depending on the most efficient means of fulfilling the customer contract. The majority of our sales, however, are fulfilled from inventory sourced through our partners.

Revenue is recognized when control of the product passes to the customer, typically at the date of delivery of the merchandise to the customer or the date a service is provided and is recognized in an amount that reflects the expected consideration to be received in exchange for such goods or services. As such, customer orders are recorded as deferred revenue prior to delivery of products or services ordered. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the type of shipping carrier (as carriers have different in-transit times); (ii) the fulfillment source (either our warehouses, those warehouses we control, or those of our partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to eight business days from the date of shipment. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates.

Generally, we require authorization from credit card or other payment vendors whose services we offer to our customers (such as PayPal), or verification of receipt of payment, before we ship products to consumers or business purchasers. From time to time we grant credit to our business purchasers with normal credit terms (typically 30 days). We generally receive payments from our customers before our payments to our suppliers are due. We do not recognize assets associated with costs to obtain or fulfill a contract with a customer.

Shipping and handling is considered a fulfillment activity, as it takes place prior to the customer obtaining control of the merchandise, and fees charged to customers are included in net revenue upon completion of our performance obligation. We present revenue net of sales taxes, discounts, and expected refunds.

Our merchandise sales contracts include terms that could cause variability in the transaction price for items such as discounts, credits, or sales returns. Accordingly, the transaction price for product sales includes estimates of variable consideration to the extent it is probable that a significant reversal of revenue recognized will not occur. At the time of sale, we estimate a sales return liability for the variable consideration based on historical experience, which is recorded within Accrued liabilities in the consolidated balance sheet. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

We evaluate the criteria outlined in ASC 606-10-55, *Principal versus Agent Considerations*, in determining whether it is appropriate to record the gross amount of merchandise sales and related costs or the net amount earned as commissions. When we are the principal in a transaction and control the specific good or service before it is transferred to the customer, revenue is recorded gross; otherwise, revenue is recorded on a net basis. Through contractual terms with our partners, we have the ability to control the promised goods or services and as a result record the majority of our retail revenue on a gross basis.

Our Other revenue occurs primarily through our broker-dealer subsidiaries in our tZERO segment. We evaluate the revenue recognition criteria above for our broker-dealer subsidiaries and we recognize revenue based on the gross amount of consideration that we expect to receive on securities transactions (commission revenue) on a trade date basis.

Club O loyalty program

We have a customer loyalty program called Club O for which we sell annual memberships. For Club O memberships, we record membership fees as deferred revenue and we recognize revenue ratably over the membership period.

The Club O loyalty program allows members to earn Club O Reward dollars for qualifying purchases made on our Website. As such, the initial transaction price giving rise to the reward dollar is allocated to each separate performance obligation based upon its relative standalone selling price. In determining the stand-alone selling price, we incorporate assumptions about the redemption rates of loyalty points. We recognize revenue for Club O Reward dollars when customers redeem such rewards as part of a purchase on our Website.

We record the standalone value of reward dollars earned in deferred revenue at the time the reward dollars are earned. Club O Reward dollars expire 90 days after the customer's Club O membership expires. We recognize estimated reward dollar breakage, to which we expect to be entitled, over the expected redemption period in proportion to actual redemptions by customers. Upon adoption of Topic 606, *Revenue from Contracts with Customers*, on January 1, 2018, we began classifying the breakage income related to Club O Reward dollars and gift cards as a component of Retail revenue in our consolidated statements of operations rather than as a component of Other income (expense), net. Breakage included in revenue was \$4.2 million and \$5.6 million for the years ended December 31, 2019 and 2018, respectively. In 2018 we also recognized a cumulative adjustment that reduced Accumulated deficit by approximately \$5.0 million upon adoption related to the unredeemed portion of our gift cards and loyalty program rewards.

Our total deferred revenue related to the outstanding Club O Reward dollars was \$6.7 million and \$6.9 million at December 31, 2019 and December 31, 2018, respectively. The timing of revenue recognition of these reward dollars is driven by actual customer activities, such as redemptions and expirations.

Advertising Revenue

Advertising revenues are derived primarily from sponsored links and display advertisements that are placed on our Website, distributed via email, or sent out as direct mailers. Advertising revenue is recognized in Retail revenue when the advertising services are rendered. Advertising revenues were less than 2% of total net revenues for all periods presented.

Revenue Disaggregation

Disaggregation of revenue by major product line is included in Segment Information in Note 21. Business Segments.

Deferred Revenue

When the timing of our provision of goods or services is different from the timing of the payments made by our customers, we recognize a contract liability (customer payment precedes performance).

Customer orders are recorded as deferred revenue prior to delivery of products or services ordered. We record amounts received for Club O membership fees as deferred revenue and we recognize it ratably over the membership period. We record Club O Reward dollars earned from purchases as deferred revenue at the time they are earned based upon the relative standalone selling price of the Club O Reward dollar and we recognize it as Retail revenue in proportion to the estimated pattern of rights exercised by the customer. If reward dollars are not redeemed, we recognize Retail revenue upon expiration. In addition, we sell gift cards and record related deferred revenue at the time of the sale. We sell gift cards without expiration dates and we recognize revenue from a gift card upon redemption of the gift card. For the unredeemed portion of our gift cards and loyalty program rewards, we will recognize Retail revenue over the expected redemption period based upon the estimated pattern of rights exercised by the customer.

The following table provides information about deferred revenue from contracts with customers, including significant changes in deferred revenue balances during the period (in thousands).

	Amount
Deferred revenue at December 31, 2017	\$ 46,468
Increase due to deferral of revenue at period end	43,216
Decrease due to beginning contract liabilities recognized as revenue	(39,106)
Deferred revenue at December 31, 2018	50,578
Increase due to deferral of revenue at period end	36,622
Decrease due to beginning contract liabilities recognized as revenue	(45,379)
Deferred revenue at December 31, 2019	\$ 41,821

Sales returns allowance

We inspect returned items when they arrive at our processing facilities. We refund the full cost of the merchandise returned and all original shipping charges if the returned item is defective or we or our partners have made an error, such as shipping the wrong product. If the return is not a result of a product defect or a fulfillment error and the customer initiates a return of an unopened item within 30 days of delivery, for most products we refund the full cost of the merchandise minus the original shipping charge and actual return shipping fees. However, we reduce refunds for returns initiated more than 30 days after delivery or that are received at our returns processing facility more than 45 days after initial delivery. If our customer returns an item that has been opened or shows signs of wear, we issue a partial refund minus the original shipping charge and actual return shipping fees.

Revenue is recorded net of estimated returns. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

The following table provides additions to and deduction from the sales returns allowance (in thousands):

	Amount
Allowance for returns at December 31, 2016	\$ 18,176
Additions to the allowance	169,398
Deductions from the allowance	(170,183)
Allowance for returns at December 31, 2017	17,391
Additions to the allowance	174,864
Deductions from the allowance	(176,994)
Allowance for returns at December 31, 2018	15,261
Additions to the allowance	117,040
Deductions from the allowance	(121,194)
Allowance for returns at December 31, 2019	\$ 11,107

Cost of goods sold

Our Retail cost of goods sold includes product costs, warehousing costs, outbound shipping costs, handling and fulfillment costs, customer service costs, and credit card fees, and is recorded in the same period in which related revenues have been recorded. Our Other cost of goods sold primarily consists of exchange fees, clearing agent fees, and other exchange fees from our broker-dealer subsidiaries in our tZERO segment. These fees are primarily for executing, processing, and settling trades on exchanges and other venues. These fees fluctuate based on changes in trade and share volumes, rate of clearance fees charged by clearing brokers, and exchanges (in thousands, except for percentages).

	Year ended December 31,					
	2019		2018		2017	
Total revenue, net	\$ 1,459,418	100%	\$ 1,821,592	100%	\$ 1,744,756	100%
Cost of goods sold						
Product costs and other cost of goods sold	1,100,351	75%	1,390,750	76%	1,328,749	76%
Fulfillment and related costs	65,974	5%	76,934	4%	75,456	4%
Total cost of goods sold	1,166,325	80%	1,467,684	81%	1,404,205	80%
Gross profit	\$ 293,093	20%	\$ 353,908	19%	\$ 340,551	20%

Advertising expense

We expense the costs of producing advertisements the first time the advertising takes place and expense the cost of communicating advertising in the period during which the advertising space or airtime is used. Internet advertising expenses are recognized as incurred based on the terms of the individual agreements, which are generally: 1) a commission for traffic driven to our Website that generates a sale or 2) a referral fee based on the number of clicks on keywords or links to our Website generated during a given period. Advertising expense is included in Sales and marketing expenses and totaled \$124.3 million, \$249.7 million and \$164.6 million during the years ended December 31, 2019, 2018 and 2017, respectively. Prepaid advertising (included in Prepaids and other current assets in the accompanying consolidated balance sheets) was \$138,000 and \$961,000 at December 31, 2019 and 2018, respectively.

Stock-based compensation

We measure compensation expense for all outstanding unvested share-based awards at fair value on the date of grant and recognize compensation expense over the service period for awards at the greater of a straight-line basis or on an accelerated schedule when vesting of the share-based awards exceeds a straight-line basis. When an award is forfeited prior to the vesting date, we recognize an adjustment for the previously recognized expense in the period of the forfeiture. See Note 15. Stock-Based Awards.

Loss contingencies

In the normal course of business, we are involved in legal proceedings and other potential loss contingencies. We accrue a liability for such matters when it is probable that a loss has been incurred and the amount, or range of amounts, can be reasonably estimated. When only a range of probable loss can be estimated, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. We expense legal fees as incurred (see Note 12. Commitments and Contingencies).

Income taxes

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statements and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We recognize deferred tax assets to the extent that we believe these assets are more likely than not to be realized. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including projected future taxable income, scheduled reversals of our deferred tax liabilities, tax planning strategies, and results of recent operations.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process whereby (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority. We recognize interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying consolidated income statements. Accrued interest and penalties are included within the related tax liability line in our consolidated balance sheets.

Net loss per share

Our Blockchain Voting Series A Preferred Stock, par value \$0.0001 per share (the "Series A Preferred"), Digital Voting Series A-1 Preferred stock, par value \$0.0001 per share (the "Series A-1 Preferred"), and our Voting Series B Preferred stock, par value \$0.0001 per share (the "Series B Preferred" together with the Series A Preferred stock and the Series A-1 Preferred stock, collectively, the "Preferred Shares") are considered participating securities, and as a result, net loss per share is calculated using the two-class method. Under this method, we give effect to preferred dividends and then allocate remaining net loss attributable to our stockholders to both common shares and participating securities (based on the percentages outstanding) in determining net loss per common share.

Basic net loss per common share is computed by dividing net loss attributable to common shares (after allocating between common shares and participating securities) by the weighted average number of common shares outstanding during the period.

Diluted net loss per share is computed by dividing net loss attributable to common shares (after allocating between common shares and participating securities) by the weighted average number of common and potential common shares outstanding during the period (after allocating total dilutive shares between our common shares outstanding and our preferred shares outstanding). Potential common shares, comprising incremental common shares issuable upon the exercise of stock options, warrants, and restricted stock awards are included in the calculation of diluted net loss per common share to the extent such shares are dilutive. Net loss attributable to common shares is adjusted for options and restricted stock awards issued by our subsidiaries when the effect of our subsidiary's diluted earnings per share is dilutive.

On July 30, 2019, we announced that our Board of Directors had declared a dividend (the "Dividend") payable in shares of our Series A-1 Preferred stock. The Dividend is payable at a ratio of 1:10, meaning that one share of Series A-1 Preferred stock will be issued for every ten shares of common stock, Series A-1 Preferred stock or Series B Preferred stock held by all holders of such shares as of the record date for the Dividend. As of December 31, 2019, the Dividend had not been distributed.

The following table sets forth the computation of basic and diluted net loss per common share for the periods indicated (in thousands, except per share data):

	Year ended December 31,		
	2019	2018	2017
Net loss attributable to stockholders of Overstock.com, Inc.	\$ (121,841)	\$ (206,070)	\$ (109,878)
Less: Preferred stock converted to common stock	—	3,098	—
Less: Preferred stock (TZROP) repurchase (gain)/loss	(425)	—	—
Less: Preferred stock dividends—declared and accumulated	894	77	216
Undistributed loss	(122,310)	(209,245)	(110,094)
Less: Undistributed loss allocated to participating securities	(1,665)	(4,368)	(2,960)
Net loss attributable to common shares	<u>\$ (120,645)</u>	<u>\$ (204,877)</u>	<u>\$ (107,134)</u>
Net loss per common share—basic:			
Net loss attributable to common shares—basic	\$ (3.46)	\$ (6.83)	\$ (4.28)
Weighted average common shares outstanding—basic	34,865	29,976	25,044
Effect of dilutive securities:			
Stock options and restricted stock awards	—	—	—
Weighted average common shares outstanding—diluted	34,865	29,976	25,044
Net loss attributable to common shares—diluted	<u>\$ (3.46)</u>	<u>\$ (6.83)</u>	<u>\$ (4.28)</u>

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Year ended December 31,		
	2019	2018	2017
Restricted stock units	1,051	543	226
Common shares issuable under stock warrant	—	21	78

Recently adopted accounting standards

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. We adopted the new standard on January 1, 2018 with a cumulative adjustment that reduced Accumulated deficit by approximately \$5.0 million as opposed to retrospectively adjusting prior periods. The adjustment primarily relates to the unredeemed portion of our gift cards and loyalty program rewards, which we will recognize over the expected redemption period, rather than waiting until the likelihood of redemption becomes remote or the rewards expire. We have also updated revenue disclosures in the notes to our financial statements as required under the new standard.

The implementation did not impact our gross and net recognition for our revenue transactions. In addition, we continue to recognize revenue related to merchandise sales upon delivery to our customers. However, we now present breakage on our Club O Rewards and gift cards in Retail revenue in our consolidated statement of operations rather as a component of Other income (expense), net.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires lessees to recognize leases on-balance sheet and disclose key information about leasing arrangements. Topic 842 was subsequently amended by ASU No. 2018-01, *Land Easement Practical Expedient for Transition to Topic 842*; ASU No. 2018-10, *Codification Improvements to Topic 842, Leases*; and ASU No. 2018-11, *Targeted Improvements*. The new standard establishes a right-of-use model (ROU) that requires a lessee to recognize a ROU asset and lease liability on the balance sheet for all leases with a term longer than 12 months. Leases will be classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the income statement.

We adopted the new standard on January 1, 2019. A modified retrospective transition approach is required, applying the new standard to all leases existing at the date of initial application. An entity may choose to use either (1) its effective date or (2) the beginning of the earliest comparative period presented in the financial statements as its date of initial application. If an entity chooses the second option, the transition requirements for existing leases also apply to leases entered into between the date of initial application and the effective date. The entity must also recast its comparative period financial statements and provide the disclosures required by the new standard for the comparative periods. We adopted the new standard on January 1, 2019 and thus used the effective date as our date of initial application. Consequently, financial information has not been updated and the disclosures required under the new standard are not provided for dates and periods before January 1, 2019. Upon adoption we recognized cumulative opening lease liabilities of approximately \$35.1 million and operating right-of-use assets of approximately \$31.0 million which were reflected as non-cash items in the consolidated statements of cash flows. The difference of \$4.2 million represented deferred rent for leases that existed as of the date of adoption, which was an offset to the opening balance of right-of-use assets.

The new standard provides a number of optional practical expedients in transition. We elected the "package of practical expedients", which permits us to not reassess under the new standard our prior conclusions about lease identification, lease classification, and initial direct costs as well as the practical expedient pertaining to land easements. We did not elect the use-of-hindsight practical expedient. The new standard also provides practical expedients for an entity's ongoing accounting. We elected the short-term lease recognition exemption for all leases that qualify. This means, for those leases that qualify, we did not recognize ROU assets or lease liabilities, and this includes not recognizing ROU assets or lease liabilities for existing short-term leases of those assets in transition. We also elected the practical expedient to not separate lease and non-lease components for all of our leases.

The standard had a material effect on our financial statements, primarily related to (1) the recognition of new ROU assets and lease liabilities on our balance sheet for our warehouse, office, data center, and equipment operating leases; and (2) providing significant new disclosures about our leasing activities. The additional operating liabilities on our consolidated balance sheets were recognized based on the present value of the remaining minimum rental payments under current leasing

standards for our existing operating leases, discounted by our incremental borrowing rate for borrowings of a similar duration on a fully secured basis, with corresponding ROU assets of approximately the same amount.

In June 2018, the FASB issued ASU 2018-07, *Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*; which aligns the measurement and classification guidance for share-based payments to nonemployees with the guidance for share-based payments to employees, with certain exceptions. Under the guidance, the measurement of equity-classified nonemployee awards will be fixed at the grant date. We adopted the changes under the new standard on January 1, 2019 on a prospective basis. The implementation of ASU 2018-07 did not have a material impact on our consolidated financial statements and related disclosures.

Recently issued accounting standards

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which revises how entities account for credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. For public entities, ASU 2016-13 is required to be adopted for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. The Company has completed its analysis of the impact of this guidance and the adoption of this standard will not have a material impact on our consolidated financial statements and related disclosures.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes ("Topic 740")—Simplifying the Accounting for Income Taxes*, which removes certain exceptions to the general principles in Topic 740 and amends existing guidance to improve consistent application. For public entities, ASU 2019-12 is required to be adopted for annual periods beginning after December 15, 2020, including interim periods within those fiscal years. Early adoption is permitted. Management is currently evaluating the impact of the adoption of this ASU on our consolidated financial statements and related disclosures.

3. BUSINESS COMBINATIONS

tZERO Crypto, Inc.

Through a series of transactions in 2018, Medici Ventures acquired a 33% equity interest in tZERO Crypto, Inc. ("tZERO Crypto"), formerly Bitsy, Inc., a U.S.-based startup that built a regulatory-compliant bridge between traditional fiat currencies and cryptocurrencies, allowing customers the ability to store, purchase and sell cryptocurrencies. tZERO Crypto was founded by Steve Hopkins, tZERO's former president and Medici Ventures' former chief operating officer and general counsel, who held a significant equity interest in tZERO Crypto. On December 21, 2018, tZERO entered into a stock purchase agreement with the owners of tZERO Crypto to acquire the remaining 67% equity interest for \$8.0 million with effective control of tZERO Crypto transferring to tZERO effective January 1, 2019. In connection with the December 2018 stock purchase agreement, Medici Ventures transferred its 33% equity interest in tZERO Crypto to tZERO for a \$4.0 million convertible promissory note due December 31, 2020 and an assignment of certain intellectual property to Medici Ventures.

tZERO has expanded the wallet's capabilities and launched it as the tZERO Crypto wallet and exchange service. tZERO plans to offer these services as part of a suite of products that includes a digital wallet and exchange service between traditional fiat currencies and cryptocurrencies.

We estimated the fair value of the acquired assets based on Level 3 inputs, which were unobservable (see Note 2. Accounting Policies, *Fair value of financial instruments*). These inputs included our estimate of future revenues, operating margins, discount rates, and assumptions about the relative competitive environment. As of March 31, 2019, our determination and allocation of the purchase price to net tangible and intangible assets was based upon preliminary estimates. During the quarter ended June 30, 2019, we received the final valuation information and completed our determination and allocation of the purchase price and recognized adjustments to the provisional values as of June 30, 2019, which decreased Intangible assets by \$650,000, increased Deferred tax liabilities by \$943,000 and resulted in a corresponding increase to Goodwill of \$1.7 million. We recognized an impairment of \$1.3 million as a result of remeasuring to fair value our 33% equity interest in tZERO Crypto held before the business combination which was based on Level 3 inputs (see Note 2. Accounting Policies, *Fair value of financial instruments*). The impairment is included in Other income (expense), net in our consolidated statement of operations for the year ended December 31, 2019.

The fair values of the assets acquired and liabilities assumed at the acquisition date are as follows (in thousands):

Purchase Price	Fair Value
Cash paid, net of cash acquired	\$ 3,115
Fair value of equity interest in tZERO Crypto held before business combination	3,800
Less: Fair value of Overstock.com common stock held by tZERO Crypto at acquisition date	(643)
Less: Settlement of receivable due from tZERO at acquisition date	(10)
Total transaction consideration, net of cash acquired	<u>\$ 6,262</u>

Allocation	
Prepays and other current assets	\$ 71
Property and equipment	16
Intangible assets	6,093
Goodwill	1,685
Deferred tax liability	(943)
Other liabilities assumed	(660)
Total net assets, net of cash acquired	<u>\$ 6,262</u>

The following table details the identifiable intangible assets acquired at their fair value and their corresponding useful lives at the acquisition date (in thousands):

Intangible Assets	Fair Value	Weighted Average Useful Life (years)
Patents	\$ 4,293	20
Technology	1,500	5
Licenses	300	1
Total acquired intangible assets as of the acquisition date	<u>\$ 6,093</u>	

Acquired intangible assets primarily include patents, technology, and licenses. The acquired assets, liabilities, and associated operating results of tZERO Crypto were consolidated into our financial statements at the acquisition date. The goodwill recognized arises from expected synergies with our tZERO operations that do not qualify for separate recognition as intangible assets and also the deferred tax liabilities arising from the business combination. None of the goodwill recognized is expected to be deductible for tax purposes. Pro forma results of operations have not been presented because the effects of this acquisition were not material to our consolidated results of operations.

Mac Warehouse, LLC

On June 25, 2018, we acquired 100% of the total equity interests of Mac Warehouse, LLC, an electronics retailer of refurbished Apple products, to complement our retail business. As of December 31, 2018, our determination and allocation of the purchase price to net tangible and intangible assets was based upon preliminary estimates. During the quarter ended March 31, 2019, we received the final valuation information and completed our determination and allocation of the purchase price and recognized adjustments to the provisional values as of March 31, 2019, which decreased the recognized Intangibles assets by \$2.8 million, increased Accrued liabilities by \$527,000, decreased Deferred tax liabilities by \$837,000 and resulted in a corresponding increase to Goodwill of \$2.5 million. Additionally, the change to the provisional amount resulted in a decrease in amortization expense and accumulated depreciation of \$1.4 million, of which \$981,000 relates to the year ended December 31, 2018, and a \$459,000 increase in Other Income related to the Accrued Liabilities that were expensed in 2018. We estimated the fair value of the acquired assets and liabilities based on Level 3 inputs, which were unobservable (see Note 2. Accounting Policies—*Fair value of financial instruments*). These inputs included our estimate of future revenues, operating margins, discount rates, royalty rates, and assumptions about the relative competitive environment.

The fair values of the assets acquired and liabilities assumed at the acquisition date are as follows (in thousands):

Purchase Price	Fair Value
Cash paid, net of cash acquired	\$ 1,143
Allocation	
Accounts receivable, net	\$ 399
Inventories, net	1,033
Prepays and other current assets	29
Property and equipment	154
Intangible assets	653
Goodwill	3,376
Accounts payable and accrued liabilities	(1,432)
Long-term debt, net	(3,069)
Total net assets, net of cash acquired	<u>\$ 1,143</u>

4. ACCOUNTS RECEIVABLE, NET

Accounts receivable, net consist of the following (in thousands):

	December 31,	
	2019	2018
Accounts receivable, trade	\$ 10,553	\$ 10,380
Credit card receivables, trade	10,515	12,141
Other receivables	6,134	3,796
Freight rebates receivable	—	11,729
	<u>27,202</u>	<u>38,046</u>
Less: allowance for doubtful accounts	(2,474)	(2,116)
Total accounts receivable, net	<u>\$ 24,728</u>	<u>\$ 35,930</u>

5. INVENTORIES, NET

Inventories, net consist of the following (in thousands):

	December 31,	
	2019	2018
Product inventories, net	\$ 3,469	\$ 10,520
Inventory in-transit	2,371	3,588
Total inventories, net	<u>\$ 5,840</u>	<u>\$ 14,108</u>

6. PREPAIDS AND OTHER CURRENT ASSETS

Prepays and other current assets consist of the following (in thousands):

	December 31,	
	2019	2018
Prepaid maintenance	\$ 6,577	\$ 7,373
Prepaid other	4,434	7,573
Prepaid insurance	4,241	2,341
Other current assets	3,088	2,963
Prepaid advertising	138	961
Prepaid inventories	—	845
Total prepaids and other current assets	<u>\$ 18,478</u>	<u>\$ 22,056</u>

7. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consist of the following (in thousands):

	December 31,	
	2019	2018
Computer hardware and software, including internal-use software and website development	\$ 223,309	\$ 215,412
Building	69,266	69,266
Furniture and equipment	17,739	17,066
Land	12,781	12,781
Leasehold improvements	11,921	8,379
Building machinery and equipment	9,796	9,713
Land improvements	7,003	6,972
	351,815	339,589
Less: accumulated depreciation	(221,787)	(204,902)
Total property and equipment, net	<u>\$ 130,028</u>	<u>\$ 134,687</u>

Depreciation of property and equipment totaled \$26.3 million, \$26.4 million, and \$28.8 million for the years ended December 31, 2019, 2018 and 2017, respectively. During the years ended December 31, 2019 and 2018, we retired \$8.2 million and \$8.0 million, respectively, of fully depreciated property and equipment that were removed from service in 2019 and 2018.

8. OTHER LONG-TERM ASSETS, NET

Other long-term assets, net consist of the following (in thousands):

	December 31,	
	2019	2018
Other long-term assets	\$ 3,166	\$ 4,419
Prepaid expenses, long-term portion	867	2,154
Deposit on purchase of a business	—	8,000
Total other long-term assets, net	<u>\$ 4,033</u>	<u>\$ 14,573</u>

9. ACCRUED LIABILITIES

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2019	2018
Accounts payable accruals	\$ 15,692	\$ 15,872
Accrued marketing expenses	13,063	14,150
Accrued compensation and other related costs	13,012	12,099
Allowance for returns	11,107	15,261
Sales and other taxes payable	10,105	9,923
Other accrued expenses	9,714	4,270
Accrued loss contingencies	9,550	10,940
Accrued freight	5,954	5,343
Total accrued liabilities	<u>\$ 88,197</u>	<u>\$ 87,858</u>

10. DEFERRED REVENUE

Deferred revenue consists of the following (in thousands):

	December 31,	
	2019	2018
Payments received prior to product delivery	\$ 21,951	\$ 30,033
Club O membership fees and reward points	11,363	11,709
In store credits	6,338	4,707
Other	1,214	730
Unredeemed gift cards	955	3,399
Total deferred revenue	<u>\$ 41,821</u>	<u>\$ 50,578</u>

11. LEASES

We have operating and finance leases for warehouses, office space, data centers, and certain equipment. Our leases have remaining lease terms of 1 year to 11 years, some of which may include options to extend the leases perpetually, and some of which may include options to terminate the leases within 1 year. We note our finance leases are immaterial to our financial statements as a whole and thus are not discussed below. Variable lease costs include executory costs, such as taxes, insurance, and maintenance.

The following table provides a summary of leases by balance sheet location as of December 31, 2019 (in thousands):

	December 31, 2019
Operating right-of-use assets	\$ 25,384
Operating lease liability—current	6,603
Operating lease liability—non-current	21,554

The components of lease expense for the year ended December 31, 2019 were as follows (in thousands):

	December 31, 2019
Operating lease cost	\$ 9,765
Short-term lease cost	96
Variable lease cost	1,848

The following tables provides a summary of other information related to leases for the year ended December 31, 2019 (in thousands, apart from weighted-average lease term and weighted average discount rate):

	December 31, 2019
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows used in operating leases	\$ (10,925)
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 17,947
Derecognition of right-of-use assets due to reassessment of lease term	\$ 16,855
Weighted-average remaining lease term—operating leases	5.86 years
Weighted-average discount rate—operating leases	8%

During the three months ended December 31, 2019, we elected the early termination option for one of our existing warehouse leases, resulting in the derecognition of a portion of our right-of-use asset, with a corresponding decrease in our cumulative lease liability.

Maturity of lease liabilities under our non-cancellable operating leases as of December 31, 2019, are as follows (in thousands):

Payments due by period		
2020	\$	8,639
2021		5,758
2022		5,624
2023		4,684
2024		3,486
Thereafter		7,361
Total lease payments		35,552
Less interest		(7,395)
Present value of lease liabilities	\$	28,157

Information for our leases for the year ended December 31, 2018 under ASC Topic 840, *Leases*, follows for comparative purposes.

Minimum future payments under all operating leases as of December 31, 2018, were as follows (in thousands):

Payments due by period		
2019	\$	8,822
2020		7,414
2021		7,654
2022		7,579
2023		6,677
Thereafter		19,571
Total lease payments	\$	57,717

Rental expense for operating leases totaled \$7.8 million and \$9.3 million for the years ended December 31, 2018 and 2017, respectively.

12. COMMITMENTS AND CONTINGENCIES

Legal proceedings and contingencies

From time to time, we are involved in litigation concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we have been in the past and we may be in the future subject to significant damages. In some instances, other parties may have contractual indemnification obligations to us. However, such contractual obligations may prove unenforceable or non-collectible, and if we cannot enforce or collect on indemnification obligations, we may bear the full responsibility for damages, fees, and costs resulting from such litigation. We may also be subject to penalties and equitable remedies that could force us to alter important business practices. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. The nature of the loss contingencies relating to claims that have been asserted against us are described below.

On September 23, 2009, SpeedTrack, Inc. sued us along with 27 other defendants in the United States District Court in the Northern District of California. We are alleged to have infringed a patent covering search and categorization software. We believe that certain third-party vendors of products and services sold to us are contractually obligated to indemnify us, and we have tendered defense of the case to an indemnitor who accepted the defense. On April 21, 2016, the court entered an order partially dismissing the claims against us. On May 4, 2016, the plaintiff filed an amended complaint, and we filed our answer. No estimate of the possible loss or range of loss can be made. We intend to vigorously defend this action and pursue our indemnification rights with our vendors.

In June 2013, William French ("French") and the State of Delaware ("Delaware") sued us, along with numerous other defendants, in the Superior Court of the State of Delaware for alleged violations of Delaware's unclaimed property laws. French and Delaware alleged that we knowingly refused to fulfill obligations under Delaware's Abandoned Property Law by failing to report and deliver unclaimed gift card funds to the State of Delaware, and knowingly made, used or caused to be made or used, false statements and records to conceal, avoid or decrease an obligation to pay or transmit money to Delaware in violation of the Delaware False Claims and Reporting Act. On June 28, 2019, the court entered a judgment against us in the amount of approximately \$7.3 million (for certain unredeemed gift card balances, treble damages, and penalties) as a result of a jury verdict which was returned September 20, 2018. On October 23, 2019, the court entered an award of attorneys' fees and costs of \$1.3 million and entered final judgment in the amount of \$8.6 million. We have commenced an appeal and filed our appellate brief. Our estimated liability for these amounts was included in Accrued liabilities at December 31, 2019. The expense associated with these litigation charges was included in general and administrative expense in our consolidated statement of operations for the year ended December 31, 2018.

In February 2018, the Division of Enforcement of the SEC informed tZERO and subsequently informed us that it is conducting an investigation and requested that we and tZERO voluntarily provide certain information and documents related to tZERO and the tZERO security token offering in connection with its investigation. In December 2018, we received a follow-up request from the SEC relating to its investigation. As previously disclosed, on October 7, 2019, we received a subpoena from the SEC requesting documents related to the Dividend we announced to stockholders in June 2019 and requesting 10b-5-1 plans of our officers and directors that were in effect during the period of January 1, 2018 through October 7, 2019. On December 9, 2019, we received a subpoena from the SEC requesting documents related to the GSR transaction and the alternative trading system run by tZERO ATS, LLC, formerly known as Pro Securities, LLC. On December 19, 2019, we received a subpoena from the SEC requesting our insider trading policies as well as certain employment and consulting agreements. We have also previously received requests from the SEC regarding our communications with our former chief executive officer and director, Patrick Byrne and the matters referenced in the December 2019 subpoenas. We are in regular, active communication with the SEC and are cooperating fully with it in connection with its investigations and information requests.

tZERO's broker-dealer subsidiaries are subject to extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization ("SRO") rules. Each of SpeedRoute LLC ("SpeedRoute") and tZERO ATS, LLC is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and in the states in which it conducts securities business and is a member of FINRA and other SROs (as applicable). In addition, tZERO ATS, LLC owns and operates an alternative trading system registered with the SEC. Each of SpeedRoute and tZERO ATS, LLC is subject to regulation, examination, investigation, and disciplinary action by the SEC, FINRA, and state securities regulators, as well as other governmental authorities and SROs with which it is registered or licensed or of which it is a member. Moreover, as a result of tZERO's projects seeking to apply distributed ledger technologies to the capital markets, tZERO's subsidiaries have

been, and remain involved in, ongoing oral and written communications with regulatory authorities. As previously disclosed, tZERO's broker-dealer subsidiaries are currently undergoing various examinations, inquiries, and/or investigations undertaken by various regulatory authorities, which may result in financial and other settlements or penalties. Any significant failure by tZERO's broker-dealer subsidiaries to satisfy regulatory authorities that they are in compliance with all applicable rules and regulations could have a material adverse effect on tZERO and on us. In addition, a further tZERO subsidiary, tZERO Markets, LLC ("tZERO Markets"), has applied for and is in process of seeking regulatory approvals to operate as a broker-dealer in a variety of areas, including retail activities. The approval process involves satisfying the regulatory authorities that tZERO Markets can operate in the manner it proposes and, in addition, if approval is granted, tZERO Markets will be subject to a number of legal and regulatory requirements, some of which will be new to tZERO's broker-dealer subsidiaries.

tZERO's subsidiary, tZERO Crypto, Inc., formerly known as Bitsy, Inc., is registered as or is applying to become a money transmitter (or its equivalent) in many states and is subject to extensive regulatory requirements applicable to money services businesses, including the requirements of the Financial Crimes Enforcement Network of the U.S. Department of the Treasury ("FinCEN"), anti-money laundering requirements, know-your-customer requirements, record-keeping, reporting and capital and bonding requirements, and inspection by state and federal regulatory agencies. Compliance with these requirements requires the dedication of significant resources and any material failure by tZERO Crypto, Inc. to remain in compliance with the applicable regulatory requirements could subject it to liability or limit the services it may offer.

On September 27, 2019, a purported securities class action lawsuit was filed against us and our former chief executive officer and former chief financial officer in the United States District Court in the Central District of Utah, alleging violations under Section 10(b), Rule 10b-5, Section 20(a), Section 20(A) of the Exchange Act. On October 8, 2019, October 17, 2019, October 31, 2019, and November 20, 2019, four similar lawsuits were filed in the same court also naming the Company and the above referenced former executives as defendants, bringing similar claims under the Exchange Act, and seeking similar relief. These cases were consolidated into a single lawsuit on December 19, 2019. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend this consolidated action.

On November 22, 2019, a shareholder derivative suit was filed against us and certain past and present directors and officers of the Company in the United States District Court for the District of Delaware, with allegations that include: (i) breach of fiduciary duties, (ii) unjust enrichment, (iii) insider selling and misappropriation of the company's information, and (iv) contribution under Sections 10(b) and 21D of the Exchange Act. On December 17, 2019, a similar lawsuit was filed in the same court, naming the same defendants, bringing similar claims, and seeking similar relief. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend these actions.

We establish liabilities when a particular contingency is probable and estimable. At December 31, 2019 and 2018, we have accrued \$9.6 million and \$10.3 million, respectively, which are included in accrued liabilities in our consolidated balance sheets. It is reasonably possible that the actual losses may exceed our accrued liabilities.

13. INDEMNIFICATIONS AND GUARANTEES

During our normal course of business, we have made certain indemnities, commitments, and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, the environmental indemnity we entered into in favor of the lenders under our prior loan agreements, customary indemnification arrangements in underwriting agreements and similar agreements, and indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. As such, we are unable to estimate with any reasonableness our potential exposure under these items. We have not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. We do, however, accrue for losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

14. STOCKHOLDERS' EQUITY

Common Stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends declared by the Board of Directors out of funds legally available, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends.

On July 30, 2019, we announced that our Board of Directors had declared the Dividend payable in shares of our Series A-1 Preferred stock. On September 18, 2019, we announced our intent to register the Series A-1 Preferred stock to be issued pursuant to the Dividend under the Securities Act of 1933 and postponed the previously announced record and distribution dates for the Dividend. On October 28, 2019, we announced that we would seek a stockholder vote at a stockholder special meeting to allow us to amend the certificates of designation for our preferred shares and removing certain restrictions, to facilitate issuance of the Dividend. On February 13, 2020, a special meeting of stockholders was held, where the stockholders approved amendments to our certificate of designation allowing us to proceed with issuing the Dividend. As of the date of this filing, we have not declared a record date for the Dividend, nor have we distributed the Dividend.

Preferred Stock

On May 1, 2019, we informed holders of our Series A Preferred stock of an opportunity to exchange (the "Exchange") outstanding Series A Preferred stock for newly-issued shares of the Company's Series A-1 Preferred stock. On June 26, 2019, the Exchange was completed for participating stockholders. In connection with the Exchange, 122,526 shares of Series A Preferred stock were validly tendered and accepted for exchange by the Company and the Company issued 122,526 shares of Series A-1 Preferred stock in exchange.

On June 26, 2019, in connection with the completion of the Exchange, 1,144 shares of Series A Preferred stock were converted into shares of Series B Preferred stock (such transaction, the "Conversion"). Following the Conversion, 2,895 shares of Series A Preferred stock remained outstanding as of June 30, 2019 and in July 2019, 2,020 of those remaining shares were exchanged for shares of Series A-1 Preferred stock and 875 of those remaining shares were converted into shares of Series B Preferred stock. Following that time, the Company eliminated the Series A Preferred stock by filing a Certificate of Elimination with the Delaware Secretary of State.

Except as required by law, the preferred shares are intended to have voting and dividend rights similar to those of one share of common stock. Preferred shares rank senior to common stock with respect to dividends. Holders of the preferred shares are entitled to an annual cash dividend of \$0.16 per share, in preference to any dividend payment to the holders of the common stock, out of funds of the Company legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of the preferred shares are also entitled to participate in any cash dividends we pay to the holders of the common stock and are also entitled to participate in non-cash dividends we pay to holders of the common stock, subject to potentially different treatment if we effect a stock dividend, stock split or combination of the common stock. There are no arrearages in cumulative preferred dividends. We declared and paid a cash dividend of \$0.16 per share on our preferred stock during 2018 and 2019.

Neither the Series A-1 Preferred stock nor Series B Preferred stock is required to be converted into or exchanged for shares of our common stock or any other entity; however, at our sole discretion, we may convert the Series A-1 Preferred stock into Series B Preferred stock at any time on a one-to-one basis. In the event of any liquidation, any amount available for distribution to stockholders after payment of all liabilities will be distributed proportionately, with each share of Series A-1 Preferred stock and each share of Series B Preferred stock being treated as though it were a share of our common stock. If we are party to any merger or consolidation in which our common stock is changed into or exchanged for stock or other securities of any other person (or the Company) or cash or any other property (or a right to receive the foregoing), we will use all commercially reasonable efforts to cause each outstanding share of the Preferred Stock to be treated as if such share were an additional outstanding share of common stock in connection with any such transaction. Neither the Series A-1 Preferred stock nor the Series B Preferred stock is registered under the Securities Exchange Act of 1934, as amended.

JonesTrading Sales Agreement

We entered into a Capital on DemandTM Sales agreement dated August 9, 2018 (which was subsequently amended on March 15, 2019 and November 12, 2019) with JonesTrading Institutional Services LLC ("JonesTrading"), under which we conducted "at the market" public offerings of our common stock. Under the sales agreement, JonesTrading, acting as our agent,

may offer our common stock in the market on a daily basis or otherwise as we request from time to time. We have no obligation to sell additional shares under the sales agreement, but expect to do so from time to time. For the year ended December 31, 2019, we sold 7,590,498 shares of our common stock pursuant to the sales agreement and have recognized \$85.8 million in proceeds, including \$2.8 million of proceeds included in Accounts receivable, net on our consolidated balance sheet, net of \$2.0 million of offering costs, including commissions paid to JonesTrading. For the year ended December 31, 2018, we sold 2,883,344 shares of our common stock pursuant to the sales agreement and received \$94.6 million in proceeds, net of \$2.6 million of offering costs, including commissions paid to JonesTrading.

TZROP

On December 18, 2017, tZERO launched an offering (the "TZROP offering") of the right to acquire tZERO's Preferred Equity Tokens, Series A ("TZROP") through a Simple Agreement for Future Equity ("SAFE"). The TZROP offering closed on August 6, 2018, and on October 12, 2018 tZERO issued the TZROP in settlement of the SAFEs. TZROP holders have the right to, prior to distributing earnings to tZERO common shareholders, a noncumulative dividend equal to 10% of tZERO's consolidated Adjusted Gross Revenue (as defined by the TZROP offering documents) for the most recently completed fiscal quarter, if declared by tZERO's Board of Directors, to be paid out of funds lawfully available on a quarterly basis. TZROP holders are not entitled to participate in any dividends paid to the holders of tZERO's common stock, have no rights to vote, and have no rights to the undistributed earnings of tZERO and are not entitled to any utility functionality as part of the TZROP. Any remaining undistributed earnings or losses of tZERO for a period shall be allocated to the noncontrolling interest held by the TZROP holders based on the contractual participation rights of the security to share in those earnings as if all the earnings for the period had been distributed. In the event of any liquidation, dissolution or winding up of tZERO, the TZROP holders will be entitled to the limited preferential liquidation rights equal to USD \$0.10 per token to the extent funds are available.

At December 31, 2018, cumulative proceeds since December 18, 2017 from the TZROP offering totaling \$104.8 million, net of \$22.0 million of withdrawals, were classified as a component of noncontrolling interest within our consolidated financial statements. As of December 31, 2018, tZERO incurred \$21.5 million of offering costs associated with the TZROP offering that are classified as a reduction in proceeds within noncontrolling interest in our consolidated financial statements.

GSR Agreement

In August 2018, Overstock signed a Token Purchase Agreement with GSR Capital Ltd., a Cayman Islands exempted company ("GSR"). The Token Purchase Agreement sets forth the terms on which GSR had agreed to purchase, for \$30 million, on May 6, 2019 or such other date as agreed by the parties, security tokens at a price of \$6.67 per security token. On May 8, 2019, the parties executed an Investment Agreement to replace the Token Purchase Agreement under which GSR agreed to purchase 508,710 shares of tZERO common stock, representing approximately 0.5% of the issued and outstanding common stock of tZERO. In exchange, GSR agreed to transfer to tZERO a total \$5.0 million in consideration. On September 16, 2019, in recognition of GSR's remaining obligations under the Investment Agreement, tZERO and GSR entered into a Promissory Note under which GSR promised to pay the remaining consideration due to tZERO under the Investment Agreement in the form of U.S. dollars in multiple installments by December 6, 2019. As of December 31, 2019, GSR had provided \$4.4 million U.S. dollars, which represents principal, interest, and late payments fees pursuant to the Investment Agreement and Promissory Note, and such amount is included in Accrued liabilities. Approximately \$911,000 of principal and accrued interest remained unpaid as of December 31, 2019.

Warrants

On November 8, 2017, we issued warrants to purchase up to a combined aggregate of 3,722,188 shares of our common stock to two purchasers in privately negotiated transactions, for an aggregate warrant purchase price of \$6.5 million, net of issuance costs. The exercise price for the warrants was \$40.45 per share of common stock. On December 29, 2017, one of the warrant holders exercised its warrant in full and purchased a total of 2,472,188 shares of common stock for \$100.0 million. On January 17, 2018, the other warrant holder exercised its warrant in full and purchased 1,250,000 shares of common stock for \$50.6 million.

15. STOCK BASED AWARDS

We have equity incentive plans that provide for the grant to employees and board members of stock-based awards, including stock options and restricted stock. Employee accounting applies to awards granted by the Company or subsidiary in the company or subsidiary's shares only to its own employees, respectively. No sibling or upstream awards have been granted. Stock-based compensation expense was as follows (in thousands):

	Years ended December 31,		
	2019	2018	2017
Overstock restricted stock awards	\$ 16,160	\$ 9,096	\$ 4,056
Medici Ventures stock options	1,214	412	21
tZERO equity awards	855	4,848	—
Total stock-based compensation expense	<u>\$ 18,229</u>	<u>\$ 14,356</u>	<u>\$ 4,077</u>

Overstock restricted stock awards

The Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan (the "Plan") provides for the grant of incentive stock options to employees and directors of the Company and non-qualified stock options to consultants, as well as restricted stock units and other types of equity awards of the Company. For the years ended December 31, 2019, 2018 and 2017, the Compensation Committee of the Board of Directors approved grants of 982,000, 387,000 and 310,000 restricted stock awards, respectively, to our officers, board members and employees. These restricted stock awards vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.3% at the end of the third year; subject to the recipient's continuing service to us. In addition to our traditional equity awards, during the quarter ended March 31, 2019, we granted 502,765 restricted stock awards with a cumulative grant date fair value of \$8.6 million which vest over a one-year period, which awards are included in the 982,000 total grants above. At December 31, 2019, there were 1,051,000 unvested restricted stock awards that remained outstanding. At December 31, 2019, 1.0 million shares of stock remained available for future grants under the Plan.

The cost of restricted stock units is determined using the fair value of our common stock on the date of the grant and compensation expense is either recognized on a straight-line basis over the vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The cumulative amount of compensation expense recognized at any point in time is at least equal to the portion of the grant date fair value of the award that is vested at that date. The weighted average grant date fair value of restricted stock awards granted during the years ended December 31, 2019, 2018 and 2017 was \$17.80, \$65.42 and \$17.75, respectively.

The following table summarizes restricted stock award activity (in thousands, except fair value data):

	2019		2018		2017	
	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	559	\$ 44.08	540	\$ 17.05	560	\$ 17.46
Granted at fair value	982	17.80	387	65.42	310	17.75
Vested	(270)	34.92	(234)	17.68	(212)	19.58
Forfeited	(220)	23.36	(134)	42.85	(118)	16.21
Outstanding—end of year	<u>1,051</u>	<u>\$ 26.22</u>	<u>559</u>	<u>\$ 44.08</u>	<u>540</u>	<u>\$ 17.05</u>

Medici Ventures stock options

The Medici Ventures, Inc. 2017 Stock Option Plan, as amended, provides for the grant of options to employees and directors of and consultants to Medici Ventures to acquire up to 9% of the authorized shares of Medici Ventures' common stock. Medici Ventures authorized 1.5 million shares, 900,000 of which are issued and outstanding to Overstock, and 130,000 of which are subject to the 2017 Stock Option Plan. The remaining 470,000 are authorized but unissued. Options vested under this plan expire at the end of ten years. During the year ended December 31, 2019, Medici Ventures granted 27,550 stock options with a cumulative grant date fair value of \$2.4 million which vest over a three-year period. During the year ended December 31, 2018, Medici Ventures granted 94,450 stock options to certain Medici Ventures and Overstock employees with a

cumulative grant date fair value of \$1.8 million, which will be expensed on a straight-line basis over the vesting period of three years.

tZERO equity awards

The tZERO Group, Inc. 2017 Equity Incentive Plan, as amended, provides for grant of options and restricted stock to employees and directors of and consultants to tZERO to acquire up to 5% of the authorized shares of tZERO's common stock. In January 2018, tZERO granted 2,000,000 restricted stock awards (post-stock split) with a cumulative grant date fair value of \$4.0 million under the equity incentive plan, all of which vested on January 23, 2018. Accordingly, there is no expense to be recognized in future periods related to these awards. As a result of these vested awards, our indirect ownership interest in tZERO was reduced from 81% to approximately 80%. During the year ended December 31, 2019, tZERO granted options to acquire 3,477,760 shares (post-stock split) of its stock with a cumulative grant date fair value of \$521,000 which will be expensed on a straight-line basis over the vesting period of three years. Options vested under this plan expire at the end of ten years. Additionally, during the year ended December 31, 2019, tZERO granted 260,500 restricted stock awards with a cumulative grant date fair value of \$795,000 which will be expensed on a straight-line basis over a cliff vesting period of two years. During the year ended December 31, 2018, tZERO granted options to acquire 5,590,000 shares (post-stock split) of its stock with a cumulative grant date fair value of \$4.6 million which will be expensed on a straight-line basis over the vesting period of two to three years.

16. EMPLOYEE RETIREMENT PLAN

We have a 401(k) defined contribution plan which permits participating employees to defer a portion of their compensation, subject to limitations established by the Internal Revenue Code. During the years ended December 31, 2019, 2018 and 2017, employees who completed 3 months of service and are 21 years of age or older are qualified to participate in the plan which matches 100% of the first 6% of each participant's contributions to the plan subject to IRS limits. Matching contributions vest immediately. Participant contributions also vest immediately. Our matching contribution totaled \$5.8 million, \$5.5 million and \$4.1 million for the years ended December 31, 2019, 2018 and 2017, respectively. We made no discretionary contributions to eligible participants for the years ended December 31, 2019, 2018 and 2017, respectively.

17. OTHER INCOME (EXPENSE), NET

Other income (expense), net consisted of the following (in thousands):

	Years ended December 31,		
	2019	2018	2017
Unrealized gain on equity securities and marketable securities	\$ 2,488	\$ 1,084	\$ —
Gift card and Club-O rewards breakage	—	—	2,742
Gain on investment in precious metals	—	—	1,971
Equity method losses	(7,734)	(3,869)	(508)
Impairment of equity securities	(7,090)	(536)	(5,487)
Impairment of notes receivable	(1,282)	—	—
Loss on sale of equity securities and marketable securities	(130)	—	—
Other	1,247	(167)	2,460
Total other income (expense), net	<u>\$ (12,501)</u>	<u>\$ (3,488)</u>	<u>\$ 1,178</u>

18. INCOME TAXES

For financial reporting purposes, income (loss) before income taxes includes the following components (in thousands):

	Years ended December 31,		
	2019	2018	2017
United States loss	\$ (134,934)	\$ (219,585)	\$ (48,039)
Foreign income (loss)	399	(369)	305
Total loss before income taxes	<u>\$ (134,535)</u>	<u>\$ (219,954)</u>	<u>\$ (47,734)</u>

The provision (benefit) for income taxes for 2019, 2018 and 2017 consists of the following (in thousands):

	Years ended December 31,		
	2019	2018	2017
Current:			
Federal	\$ (49)	\$ (57)	\$ 365
State	195	(141)	280
Foreign	158	44	57
Total current	<u>304</u>	<u>(154)</u>	<u>702</u>
Deferred:			
Federal	(99)	(1,583)	56,350
State	(18)	(645)	7,146
Foreign	(2)	(2)	(10)
Total deferred	<u>(119)</u>	<u>(2,230)</u>	<u>63,486</u>
Total provision (benefit) for income taxes	<u>\$ 185</u>	<u>\$ (2,384)</u>	<u>\$ 64,188</u>

The provision (benefit) for income taxes for 2019, 2018 and 2017 differ from the amounts computed by applying the U.S. federal income tax rate of 21% for 2019 and 2018 and 35% for 2017 to loss before income taxes for the following reasons (in thousands):

	Year ended December 31,		
	2019	2018	2017
U.S. federal income tax provision (benefit) at statutory rate	\$ (28,252)	\$ (46,190)	\$ (16,707)
State income tax expense, net of federal benefit	(4,952)	(8,289)	(2,480)
Research and development credit	(2,014)	(1,734)	(1,696)
Stock based compensation expense	1,440	(1,260)	164
Other	1,437	1,652	581
Gain on subsidiary stock	193	2,192	—
Reduction in federal rate	—	—	25,287
Change in valuation allowance	32,333	51,245	59,039
Total provision (benefit) for income taxes	<u>\$ 185</u>	<u>\$ (2,384)</u>	<u>\$ 64,188</u>

The components of our deferred tax assets and liabilities as of December 31, 2019 and 2018 are as follows (in thousands):

	December 31,	
	2019	2018
Deferred tax assets:		
Net operating loss carryforwards	\$ 104,153	\$ 79,820
Research and development tax credits	17,922	15,382
Accrued expenses	9,893	7,898
Basis difference in equity securities	7,075	4,857
Operating lease liabilities	6,970	—
Intangible assets	4,130	2,234
Reserves and other	4,018	5,345
Interest expense carryforward	677	—
Fixed assets	608	259
Other tax credits and carryforwards	300	206
Gross deferred tax assets	155,746	116,001
Valuation allowance	(146,856)	(114,523)
Total deferred tax assets	8,890	1,478
Deferred tax liabilities:		
Operating lease right-of-use assets	(6,263)	—
Marketable securities	(1,068)	—
Prepaid expenses	(810)	(880)
Goodwill	(677)	(489)
Total deferred tax liabilities	(8,818)	(1,369)
Total deferred tax assets, net	\$ 72	\$ 109

At December 31, 2019, we have federal net operating loss carryforwards with no expiration date of approximately \$261.5 million; the utilization of these net operating loss carryforwards is limited to 80% of taxable income in any given year. We also have federal net operating loss carryforwards of approximately \$2.4 million which expire in 2020 and \$149.9 million which expire between 2026 and 2037. We have state net operating loss carryforwards with no expiration date of approximately \$119.7 million; the utilization of these net operating loss carryforwards is limited to 80% of taxable income in those states in any given year. We also have state net operating loss carryforwards of approximately \$86.0 million which expire in 2021, \$16.2 million which expire in 2022, and \$145.8 million that expire between 2023 and 2039. We have foreign net operating loss carryforwards of \$1.2 million that expire primarily between 2023 and 2024.

At December 31, 2019, we have federal research credit carryforwards of approximately \$19.2 million that expire between 2027 and 2039. We also have state research credit carryforwards of approximately \$7.9 million that expire between 2021 and 2033. Ownership changes under Internal Revenue Code Section 382 could limit the amount of net operating losses or credit carryforwards that can be used in the future.

Each quarter we assess the recoverability of our deferred tax assets under ASC Topic 740. We assess the available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. We have limited carryback ability and do not have significant taxable temporary differences to recover our existing deferred tax assets, therefore we must rely on future taxable income, including tax planning strategies, to support their realizability. We have established a valuation allowance for our deferred tax assets not supported by carryback ability or taxable temporary differences, primarily due to uncertainty regarding our future taxable income. We have considered, among other things, the cumulative loss incurred over the three-year period ended December 31, 2019, as a significant piece of objective negative evidence. We intend to continue maintaining a valuation allowance on our net deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances. The amount of the deferred tax asset considered realizable could be adjusted if objective negative evidence in the form of cumulative losses is no longer present and additional weight may be given to subjective evidence such as long-term projections for growth. We will continue to monitor the need for a valuation allowance against our remaining deferred tax assets on a quarterly basis.

A reconciliation of the beginning and ending unrecognized tax benefits, excluding interest and penalties, as of December 31, 2019, 2018 and 2017 is as follows (in thousands):

	Year ended December 31,		
	2019	2018	2017
Beginning balance	\$ 7,974	\$ 6,964	\$ 7,333
Additions for tax positions related to the current year	1,064	1,013	881
Additions (reductions) for tax positions taken in prior years	20	332	230
Reduction for tax positions settled by utilizing tax attributes	—	(335)	(1,480)
Ending balance	\$ 9,058	\$ 7,974	\$ 6,964

Included in the balance of unrecognized tax benefits as of December 31, 2019, 2018 and 2017, are approximately \$9.1 million, \$8.0 million, and \$7.0 million, respectively, of tax benefits that, if recognized and the valuation allowance against our net deferred tax assets were released, would affect the effective tax rate. We believe it is reasonably possible that these unrecognized tax benefits will continue to increase in the future.

Accrued interest and penalties on unrecognized tax benefits as of December 31, 2019 and 2018 were \$567,000 and \$499,000, respectively.

We are subject to taxation in the United States and various state and foreign jurisdictions. Tax years beginning in 2015 are subject to examination by taxing authorities, although net operating loss and credit carryforwards from all years are subject to examinations and adjustments for at least three years following the year in which the attributes are used. An audit by the Ireland Revenue Agency for the calendar year 2016 was finalized during 2019 with no assessment.

We have indefinitely reinvested foreign earnings of \$2.5 million at December 31, 2019. We would need to accrue and pay various taxes on this amount if repatriated. We do not intend to repatriate these earnings.

19. RELATED PARTY TRANSACTIONS

PCL L.L.C. term loan repayment

On November 6, 2017, we entered into a loan agreement with PCL L.L.C., an entity directly or indirectly wholly-owned by the mother and brother of our former President and Chief Executive Officer and former member of our Board of Directors, Dr. Patrick M. Byrne ("Dr. Byrne"). The agreement provides for a \$40.0 million term loan (the "PCL Loan") which carries an annual interest rate of 8.0%. On May 8, 2018, our Board of Directors approved a prepayment of the PCL Loan and we repaid the entire outstanding balance under the loan plus accrued interest.

SiteHelix

On June 28, 2018, we entered into and concurrently closed a stock purchase agreement with the stockholders of SiteHelix, Inc., a Delaware corporation ("SiteHelix") pursuant to which we purchased all of the common stock of SiteHelix for \$500,000 plus 100,000 shares of Overstock common stock with a transaction date fair value of \$2.9 million for an aggregate purchase price of \$3.4 million. The transaction was accounted for as an asset purchase consisting primarily of internal-use software designed to provide a customized user experience for visitors to our Website. Saum Noursalehi, who owned approximately 62% of the SiteHelix common stock, was a member of our Board of Directors and served as President of Overstock until May 8, 2018, when he became Chief Executive Officer of tZERO.

tZERO Crypto Agreement

In July 2018, Medici Ventures entered into a stock purchase agreement with tZERO Crypto, Inc. ("tZERO Crypto"), formerly Bitsy, Inc. On December 21, 2018, tZERO entered into a stock purchase agreement with the owners of tZERO Crypto to acquire the remaining equity interest with effective control of tZERO Crypto transferring to tZERO effective January 1, 2019. See Note 3. Business Combinations for further discussion.

In September 2018, Medici Ventures entered into a stock purchase agreement with Chainstone Labs, Inc. ("Chainstone") to acquire a 29% equity interest in Chainstone for \$3.6 million. Chainstone is a U.S.-based startup company founded and 71% owned by a former Board member of Medici Ventures, Bruce Fenton. Chainstone is focused on blockchain, tokenization of securities, and decentralized asset management. Our equity interest is included in our equity securities on our consolidated balance sheets.

Medici Land Governance

Medici Land Governance Inc., a Delaware public benefit corporation ("MLG"), was formed by Medici Ventures with Dr. Byrne. Pursuant to the Subscription Agreements dated September 21, 2018, Medici Ventures contributed certain of its assets, including intellectual property relating to technologies regarding land governance and property rights, to MLG in exchange for 510,000 shares of MLG common stock and at the same time Dr. Byrne personally contributed \$6.7 million in cash to MLG in exchange for 390,000 shares of MLG common stock. At the same time MLG, Medici Ventures, and Dr. Byrne entered into a Stockholders Agreement dated September 21, 2018 regarding MLG (the "MLG Stockholder Agreement"). The MLG Stockholder Agreement restricts the transfer of the shares held by Medici Ventures and Dr. Byrne, creates rights of first refusal in favor of MLG, Medici Ventures, and Dr. Byrne to acquire shares to be sold by Medici Ventures or Dr. Byrne, creates purchase rights in favor of MLG and Medici Ventures in the event of the death or incapacity of Dr. Byrne, creates preemptive rights in favor of MLG and Medici Ventures if MLG proposes to sell capital stock to any other person (subject to certain exceptions), provides for voting for board members, and requires a supermajority consent of the stockholders for any sale of MLG or substantially all of its assets, merger, consolidation, or other transaction having substantially the same effect.

As a result of the transactions described above, Medici Ventures holds approximately 57% of the outstanding capital stock of MLG, and Dr. Byrne holds approximately 43% of the outstanding capital stock of MLG. The financial results of MLG are included in our consolidated financial statements.

20. BROKER-DEALERS

tZERO wholly owns two broker-dealers, SpeedRoute and tZERO ATS, LLC, which were acquired in January 2016.

SpeedRoute is an electronic, agency-only, FINRA-registered broker-dealer that provides connectivity for its customers to U.S. equity exchanges as well as off-exchange sources of liquidity such as dark pools. All of SpeedRoute's customers are registered broker-dealers. SpeedRoute does not hold, own, or sell securities.

tZERO ATS, LLC is a FINRA-registered broker-dealer that owns and operates the tZERO ATS, an alternative trading system registered with the SEC. The tZERO ATS is a trading system that is not regulated as an exchange but is a licensed venue for matching buy and sell orders for securities. The tZERO ATS is a closed system available only to its broker-dealer subscribers. The tZERO ATS does not accept orders from non-broker-dealers, nor does it hold, own, or sell securities.

SpeedRoute and tZERO ATS, LLC are subject to the SEC's Uniform Net Capital Rule (SEC Rule 15c3-1), which requires the maintenance of minimum net capital and requires that the ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 15 to 1 and that equity capital may not be withdrawn or cash dividends paid if the resulting net capital ratio would exceed 10 to 1. At December 31, 2019, SpeedRoute had net capital of \$850,024, which was \$705,031 in excess of its required net capital of \$144,993 and SpeedRoute's net capital ratio was 2.56 to 1. At December 31, 2019, tZERO ATS, LLC had net capital of \$109,515, which was \$104,515 in excess of its required net capital of \$5,000 and tZERO ATS, LLC's net capital ratio was 0.27 to 1. At December 31, 2018, SpeedRoute had net capital of \$1,251,579, which was \$1,152,854 in excess of its required net capital of \$98,725 and SpeedRoute's net capital ratio was 1.2 to 1. At December 31, 2018, tZERO ATS, LLC had net capital of \$13,958, which was \$8,958 in excess of its required net capital of \$5,000 and tZERO ATS, LLC's net capital ratio was 2 to 1.

SpeedRoute and tZERO ATS, LLC did not have any securities owned or securities sold, not yet purchased at December 31, 2019 and 2018.

21. BUSINESS SEGMENTS

Segment information has been prepared in accordance with ASC Topic 280 *Segment Reporting*. We determined our segments based on how we manage our business. Beginning in the first quarter of 2019, we began allocating corporate support costs (administrative functions such as finance, human resources, and legal) to our operating segments based on their estimated usage and based on how we manage our business. Comparative prior year information has not been recast and as a result our corporate support costs for those comparative prior periods remain allocated to our Retail segment. Our Medici business includes two reportable segments, tZERO and the unconsolidated financial information for Medici Ventures ("MVI"). MVI was identified as a reportable segment separate from Other during 2019. We have recast prior period segment information to conform with current year presentation. MVI consists of the Medici business not associated with tZERO or MLG. We use pre-tax net income (loss) as the measure to determine our reportable segments. As a result, the MLG portion of our Medici Business is not significant as compared to our Retail, tZERO, and MVI segments. Other consists of MLG and our unallocated corporate support costs.

Our Retail segment primarily consists of amounts earned through e-commerce sales through our Website, excluding intercompany transactions eliminated in consolidation.

Our tZERO segment primarily consists of amounts earned through securities transaction through our broker-dealers and costs incurred to execute our tZERO business initiatives, excluding intercompany transactions eliminated in consolidation.

Our MVI segment primarily consists of costs incurred to create or foster a set of products and solutions that leverage blockchain technology to generate efficiencies and increase security and control, excluding intercompany transactions eliminated in consolidation.

We do not allocate assets between our segments for our internal management purposes, and as such, they are not presented here. There were no significant inter-segment sales or transfers during the years ended December 31, 2019, 2018 and 2017.

The following table summarizes information about reportable segments and a reconciliation to consolidated net income (loss) for the years ended December 31, 2019, 2018 and 2017 (in thousands):

	Retail	tZERO	MVI	Other	Total
2019					
Revenue, net	\$ 1,434,974	\$ 21,582	\$ 2,749	\$ 113	\$ 1,459,418
Cost of goods sold	1,147,025	16,551	2,749	—	1,166,325
Gross profit	287,949	5,031	—	113	293,093
Operating expenses (1)	332,372	54,911	14,778	14,521	416,582
Interest and other income (expense), net (2)	559	2,442	(14,039)	(8)	(11,046)
Pre-tax loss	<u>\$ (43,864)</u>	<u>\$ (47,438)</u>	<u>\$ (28,817)</u>	<u>\$ (14,416)</u>	<u>(134,535)</u>
Provision for income taxes					185
Net loss (3)					<u>\$ (134,720)</u>
2018					
Revenue, net	\$ 1,800,187	\$ 19,043	\$ 2,362	\$ —	\$ 1,821,592
Cost of goods sold	1,452,195	13,127	2,362	—	1,467,684
Gross profit	347,992	5,916	—	—	353,908
Operating expenses	506,113	47,006	8,316	9,679	571,114
Interest and other income (expense), net (2)	(476)	233	(2,498)	(7)	(2,748)
Pre-tax loss	<u>\$ (158,597)</u>	<u>\$ (40,857)</u>	<u>\$ (10,814)</u>	<u>\$ (9,686)</u>	<u>(219,954)</u>
Benefit for income taxes					(2,384)
Net loss (3)					<u>\$ (217,570)</u>

	Retail	tZERO	MVI	Other	Total
2017					
Revenue, net	\$ 1,728,104	\$ 16,493	\$ 159	\$ —	\$ 1,744,756
Cost of goods sold	1,392,558	11,647	—	—	1,404,205
Gross profit	335,546	4,846	159	—	340,551
Operating expenses	365,648	17,101	4,436	—	387,185
Interest and other income (expense), net (2)	4,680	—	(5,780)	—	(1,100)
Pre-tax loss	<u>\$ (25,422)</u>	<u>\$ (12,255)</u>	<u>\$ (10,057)</u>	<u>\$ —</u>	<u>(47,734)</u>
Provision for income taxes					64,188
Net loss (3)					<u>\$ (111,922)</u>

- (1) — Corporate support costs for the year ended December 31, 2019 have been allocated \$42.0 million, \$6.0 million, \$4.2 million, and \$7.8 million, to Retail, tZERO, MVI, and Other, respectively. Unallocated corporate support costs of \$6.0 million are included in Other.
- (2) — Excludes intercompany transactions eliminated in consolidation, which consist primarily of service fees and interest. The net amounts of these intercompany transactions were \$2.7 million, \$3.5 million, and \$2.0 million for the years ended December 31, 2019, 2018 and 2017, respectively.
- (3) — Net loss presented for segment reporting purposes is before any adjustments attributable to noncontrolling interests.

For the years ended December 31, 2019, 2018 and 2017, substantially all our sales revenues were attributable to customers in the United States. At December 31, 2019 and 2018, substantially all our fixed assets were located in the United States.

22. QUARTERLY RESULTS OF OPERATIONS (unaudited)

The following tables set forth our unaudited quarterly results of operations data for the eight most recent quarters for the period ended December 31, 2019. We have prepared this information on the same basis as the consolidated statements of operations and the information includes all adjustments that we consider necessary for a fair statement of its financial position and operating results for the quarters presented.

	Three Months Ended			
	March 31, 2019	June 30, 2019	September 30, 2019	December 31, 2019
(in thousands, except per share data)				
Consolidated Statement of Operations Data:				
Revenue, net				
Retail	\$ 362,625	\$ 367,475	\$ 340,798	\$ 364,076
Other	5,104	6,234	6,301	6,805
Total net revenue	367,729	373,709	347,099	370,881
Cost of goods sold				
Retail	290,640	294,984	272,545	288,856
Other	3,965	4,826	5,006	5,503
Total cost of goods sold	294,605	299,810	277,551	294,359
Gross profit	73,124	73,899	69,548	76,522
Operating expenses:				
Sales and marketing	33,477	34,560	34,215	40,868
Technology	35,433	33,153	32,782	33,970
General and administrative	40,232	31,964	32,681	33,247
Total operating expenses	109,142	99,677	99,678	108,085
Operating loss	(36,018)	(25,778)	(30,130)	(31,563)
Interest income	403	630	449	315
Interest expense	(127)	(105)	(57)	(53)
Other income (expense), net	(6,272)	(2,995)	(4,781)	1,547
Loss before income taxes	(42,014)	(28,248)	(34,519)	(29,754)
Provision (benefit) for income taxes	878	(622)	23	(94)
Net loss	(42,892)	(27,626)	(34,542)	(29,660)
Less: Net loss attributable to noncontrolling interests	(3,648)	(2,945)	(3,604)	(2,682)
Net loss attributable to stockholders of Overstock.com, Inc.	\$ (39,244)	\$ (24,681)	\$ (30,938)	\$ (26,978)
Net loss per common share—basic:				
Net loss attributable to common shares—basic	\$ (1.18)	\$ (0.69)	\$ (0.89)	\$ (0.73)
Weighted average common shares outstanding—basic	32,370	35,225	35,241	36,573
Net loss per common share—diluted:				
Net loss attributable to common shares—diluted	\$ (1.18)	\$ (0.69)	\$ (0.89)	\$ (0.73)
Weighted average common shares outstanding—diluted	32,370	35,225	35,241	36,573

	Three Months Ended			
	March 31, 2018	June 30, 2018	September 30, 2018	December 31, 2018
(in thousands, except per share data)				
Consolidated Statement of Operations Data:				
Revenue, net				
Retail	\$ 439,996	\$ 477,683	\$ 435,775	\$ 446,733
Other	5,335	5,450	4,805	5,815
Total net revenue	445,331	483,133	440,580	452,548
Cost of goods sold				
Retail	347,580	387,252	350,651	366,712
Other	3,882	4,138	3,213	4,256
Total cost of goods sold	351,462	391,390	353,864	370,968
Gross profit	93,869	91,743	86,716	81,580
Operating expenses:				
Sales and marketing	77,214	94,416	55,312	47,537
Technology	31,294	32,423	33,880	34,557
General and administrative	39,755	31,440	45,356	47,930
Total operating expenses	148,263	158,279	134,548	130,024
Operating loss	(54,394)	(66,536)	(47,832)	(48,444)
Interest income	544	620	383	661
Interest expense	(874)	(395)	(101)	(98)
Other income (expense), net	(9)	368	(1,848)	(1,999)
Loss before income taxes	(54,733)	(65,943)	(49,398)	(49,880)
Benefit for income taxes	(277)	(27)	(141)	(1,939)
Net loss	(54,456)	(65,916)	(49,257)	(47,941)
Less: Net loss attributable to noncontrolling interests	(3,547)	(1,005)	(1,334)	(5,614)
Net loss attributable to stockholders of Overstock.com, Inc.	\$ (50,909)	\$ (64,911)	\$ (47,923)	\$ (42,327)
Net loss per common share—basic:				
Net loss attributable to common shares—basic	\$ (1.74)	\$ (2.20)	\$ (1.55)	\$ (1.39)
Weighted average common shares outstanding—basic	28,566	28,903	30,279	32,112
Net loss per common share—diluted:				
Net loss attributable to common shares—diluted	\$ (1.74)	\$ (2.20)	\$ (1.55)	\$ (1.39)
Weighted average common shares outstanding—diluted	28,566	28,903	30,279	32,112

23. SUBSEQUENT EVENTS

Medici Land Governance

In February 2020, Medici Land Governance, Inc. ("MLG"), a majority owned-subsidiary of Medici Ventures, sold and issued shares of common stock in MLG to an unrelated third-party which reduced Medici Ventures' equity interest in MLG from 57% to 35%.

New loan agreements

In March 2020, we entered into two loan agreements with Loan Core Capital Funding Corporation LLC. The loan agreements provide a \$34.5 million Senior Note and a \$13.0 million Mezzanine Note. The loans carry an annual interest rate of 4.45%. The Senior Note is for a 10-year term and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note is for approximately a 46-month term and requires principal and interest payments monthly over the life of the loan. Both loans are secured by our corporate headquarters and the related land. We incurred insignificant debt issuance costs with the new loan agreements.

Schedule II
Valuation and Qualifying Accounts
(in thousands)

	Balance at Beginning of Year	Charged to Expense	Deductions	Balance at End of Year
Year ended December 31, 2019				
Deferred tax valuation allowance	\$ 114,523	\$ 32,333	\$ —	\$ 146,856
Allowance for sales returns	15,261	117,040	121,194	11,107
Allowance for doubtful accounts	2,116	659	301	2,474
Year ended December 31, 2018				
Deferred tax valuation allowance	\$ 63,278	\$ 51,245	\$ —	\$ 114,523
Allowance for sales returns	17,391	174,864	176,994	15,261
Allowance for doubtful accounts	1,253	883	20	2,116
Year ended December 31, 2017				
Deferred tax valuation allowance	\$ 4,239	\$ 59,039	\$ —	\$ 63,278
Allowance for sales returns	18,176	169,398	170,183	17,391
Allowance for doubtful accounts	1,999	309	1,055	1,253

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation required by the Exchange Act, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Limitations on Disclosure Controls and Procedures and Internal Control over Financing Reporting

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

Changes in Internal Control Over Financial Reporting

During the fiscal quarter ended December 31, 2019, there has not occurred any change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act.

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness of internal control over financial reporting to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2019. In making our assessment of the effectiveness of internal control over financial reporting, management used the criteria set forth in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this assessment, management has concluded that, as of December 31, 2019, our internal control over financial reporting was effective.

Our internal control over financial reporting is designed to provide reasonable assurance of achieving its objectives as specified above. Management does not expect, however, that our internal control over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

The effectiveness of our internal control over financial reporting as of December 31, 2019 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is included below.

Independent Registered Public Accounting Firm's Report on Internal Control Over Financial Reporting

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Overstock.com, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited Overstock.com, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes and financial statement schedule II (collectively, the consolidated financial statements), and our report dated March 13, 2020 expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

Salt Lake City, Utah
March 13, 2020

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information regarding our Executive Officers required by Item 10 of Part III is set forth in Item 1 of Part I under "Business—Executive Officers of the Registrant." Information required by Item 10 of Part III regarding our Board of Directors and any material changes to the process by which security holders may recommend nominees to the Board of Directors will be included in our definitive proxy statement for our 2020 annual meeting of stockholders and is incorporated herein by reference. Information relating to compliance with Section 16(a) of the 1934 Act will be set forth in our definitive proxy statement for our 2020 annual meeting of stockholders and is incorporated herein by reference.

We have adopted a Code of Business Conduct and Ethics ("Code"), which applies to all employees of the Company, including our principal executive officer, principal financial officer, and principal accounting officer. We intend to disclose any amendments to the Code and any waivers granted to our principal executive officer, principal financial officer or principal accounting officer or other persons to the extent required by applicable rules or regulations in the Investor Relations section of our Website, www.overstock.com. We will provide a copy of the Code to any person without any charge upon request in writing addressed to Overstock.com. Attn: Investor Relations, 799 West Coliseum Way, Midvale, UT 84047.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2020 annual meeting of stockholders.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Except as set forth herein, the information required by this Item is incorporated by reference to our definitive proxy statement for the 2020 annual meeting of stockholders.

Securities authorized for issuance under equity compensation plans

Our Board of Directors adopted the 2005 Equity Incentive Plan, which was most recently amended and restated and re-approved by the stockholders on May 9, 2017 (as so amended and restated, the "Plan"). Under the Plan, the Board of Directors may issue incentive stock options to our employees and directors and non-qualified stock options to consultants, as well as restricted stock units and other types of equity awards of the Company.

Options granted under the Plan generally expire at the end of ten years and vest in accordance with a vesting schedule determined by our Board of Directors, usually over four years from the grant date. We have not granted compensatory stock options since 2008, and no stock options are outstanding under the Plan. At December 31, 2019, no options were outstanding under the Plan.

Restricted stock units granted in 2019, 2018, and 2017 vest over three years at 33.3% at the end of each of the first, second and third year. In addition to our traditional equity awards, during the year ended December 31, 2019, we granted 502,765 restricted stock awards which vest over a one-year period. Each restricted stock unit represents the right to one share of common stock upon vesting.

The following is a summary of restricted stock unit activity (amounts in thousands, except per share data):

	2019		2018		2017	
	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	559	\$ 44.08	540	\$ 17.05	560	\$ 17.46
Granted at fair value	982	17.80	387	65.42	310	17.75
Vested	(270)	34.92	(234)	17.68	(212)	19.58
Forfeited	(220)	23.36	(134)	42.85	(118)	16.21
Outstanding—end of year	<u>1,051</u>	<u>\$ 26.22</u>	<u>559</u>	<u>\$ 44.08</u>	<u>540</u>	<u>\$ 17.05</u>

At December 31, 2019, 1.0 million shares of stock remained available for future grants under the Plan.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2020 annual meeting of stockholders.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2020 annual meeting of stockholders.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements:

The financial statements are filed as part of this Annual Report on Form 10-K under "Item 8. Financial Statements and Supplementary Data."

(2) Financial Statement Schedules:

Schedule II Valuation and Qualifying Accounts is provided in "Item 8. Financial Statements and Supplementary Data." Other schedules have been omitted as they are either not required, not applicable, or the information has otherwise been shown in the consolidated financial statements or notes thereto under "Item 8. Financial Statements and Supplementary Data."

(3) Exhibits:

See exhibits listed under Part (b) below.

(b) Exhibits

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
3.1	Amended and Restated Certificate of Incorporation	10-Q	000-49799	3.1	July 29, 2014	
3.2	Amended and Restated Bylaws	10-Q	000-49799	3.1	May 4, 2017	
3.3	Certificate of Elimination for Blockchain Voting Series A Preferred Stock of Overstock.com, Inc.	8-K	000-49799	3.2	July 30, 2019	
3.4	Certificate of Designation of Digital Voting Series A-1 Preferred Stock of Overstock.com, Inc.	8-K	000-49799	3.1	June 27, 2019	
3.5	Certificate of Designation for the Voting Series B Preferred Stock of Overstock.com, Inc.	8-K	000-49799	3.2	December 15, 2016	
4.1	Form of specimen common stock certificate	S-1/A	333-83728	4.1	May 6, 2002	
4.2	Form of Stock Certificate for Voting Series B Preferred Stock	8-K	000-49799	4.2	November 14, 2016	
4.3	Certificate of Designation of Digital Voting Series A-1 Preferred Stock of Overstock.com, Inc. (see Exhibit 3.4)					
4.4	Certificate of Designation for the Voting Series B Preferred Stock of Overstock.com, Inc. (see Exhibit 3.5)					

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
4.5	Description of Securities Registered Under Section 12 of the Securities Exchange Act of 1934					X
4.6(a)	Registration Rights Agreement dated December 15, 2016 by and among Overstock.com, Inc. and Patrick M. Byrne, individually and as representative of each of the Participating Affiliates (as defined therein)	8-K	000-49799	4.1	December 15, 2016	
4.7	Form of Participating Affiliate Agreement (included in Exhibit 4.3)					
4.8(a)	Amendment No. 1 to Registration Rights Agreement effective March 10, 2017 by and among Overstock.com, Inc. and Patrick M. Byrne, individually and in his representative capacity	10-Q	000-49799	4.2	May 4, 2017	
4.9(a)	Amendment No. 2 to Registration Rights Agreement effective June 10, 2017 by and among Overstock.com, Inc. and Patrick M. Byrne, individually and in his representative capacity	10-Q	000-49799	4.1	August 3, 2017	
10.1(a)	Form of Indemnification Agreement between Overstock.com, Inc. and each of its directors and officers	10-K	000-49799	10.1	March 18, 2019	
10.2(a)	Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan	8-K	000-49799	10.1	May 15, 2017	
10.3(a)	Form of Restricted Stock Unit Grant Notice and Restricted Stock Agreement under the 2005 Equity Incentive Plan	10-K	000-49799	10.12	February 21, 2013	
10.4(a)	tZERO Group, Inc. 2017 Equity Incentive Plan, as amended through October 10, 2019					X
10.5(a)	Form of Notice Grant under tZERO 2017 Equity Incentive Plan					X
10.6(a)	Medici Ventures, Inc. 2017 Stock Option Plan	8-K	000-49799	10.1	August 1, 2017	
10.7(a)	Amendment No. 1 to the Medici Ventures, Inc. 2017 Stock Option Plan	8-K	000-49799	10.1	April 22, 2019	
10.8(a)	Form of Notice of Grant under Medici Ventures 2017 Stock Option Plan	10-K	000-49799	10.36	March 18, 2019	
10.9(a)	Medici Land Governance, Inc. 2019 Stock Option Plan	8-K	000-49799	10.1	May 6, 2019	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.10(a)	Summary of unwritten compensation arrangements with Non-Employee Directors	10-K	000-49799	10.16	March 18, 2019	
10.11	Purchase and Sale Agreement dated May 5, 2014 between O.Com Land LLC, Gardner Bingham Junction Holdings, L.C. and Arbor Bingham Junction Holdings, L.C.	8-K	000-49799	10.1	May 7, 2014	
10.12	First Amendment dated July 29, 2014 to Purchase and Sale Agreement dated May 5, 2014 between O.Com Land LLC, Gardner Bingham Junction Holdings, L.C. and Arbor Bingham Junction Holdings, L.C.	8-K	000-49799	10.1	August 6, 2014	
10.13	Second Amendment dated September 3, 2014 to Purchase and Sale Agreement dated May 5, 2014 between O.Com Land LLC, Gardner Bingham Junction Holdings, L.C. and Arbor Bingham Junction Holdings, L.C.	8-K	000-49799	10.1	September 8, 2014	
10.14	Project Management Agreement dated May 5, 2014 between O.Com Land LLC and Gardner CMS, L.C.	8-K	000-49799	10.2	May 7, 2014	
10.15	Purchase and Sale Agreement dated September 17, 2014 by and between the Redevelopment Agency of Midvale City and O.com Land LLC	8-K	000-49799	10.1	September 23, 2014	
10.16	Lease Agreement dated October 24, 2014 between O.com Land, LLC and Overstock.com Inc.	8-K	000-49799	10.19	October 28, 2014	
10.16(a)	Summary of Unwritten Compensation Arrangements Applicable to Non-Employee Directors of Overstock.com, Inc.					X
10.17	Capital on DemandTM Sales Agreement with JonesTrading Institutional Services LLC, as agent, dated August 9, 2018	S-3	333-226729	1.1	August 9, 2018	
10.18	Amendment No. 1 to Capital on DemandTM Sales Agreement between Overstock.com, Inc. and JonesTrading Institutional Services LLC, as agent, dated March 15, 2019					X
10.19	Amendment No. 2 to Capital on DemandTM Sales Agreement between Overstock.com, Inc. and JonesTrading Institutional Services LLC, as agent, dated November 12, 2019	8-K	000-49799	1.1	November 12, 2019	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.20(a)	Stockholders Agreement dated September 21, 2018 by and among Medici Land Governance, Inc., Medici Ventures, Inc. and Patrick M. Byrne	8-K	000-49799	10.1	September 26, 2018	
10.21(a)	Notice of Stock Option Grant effective May 21, 2018 dated June 6, 2018 between t0.com, Inc. and Saum Noursalehi	10-Q	000-49799	10.2	August 9, 2018	
10.22(a)	Summary of unwritten compensation arrangement with Saum Noursalehi	10-Q	000-49799	10.4	August 9, 2018	
10.23(a)	Offer letter dated April 1, 2018 from Overstock.com, Inc. to Gregory J. Iverson	10-Q	000-49799	10.5	August 9, 2018	
10.24(a)	Omnibus Amendment to Option Grant Agreements under tZERO 2017 Equity Incentive Plan, dated November 25, 2019					X
21	Subsidiaries of the Registrant					X
23	Consent of Independent Registered Public Accounting Firm					X
24	Powers of Attorney (see signature page)					
31.1	Certification of Principal Executive Officer					X
31.2	Certification of Principal Financial Officer					X
32.1	Section 1350 Certification of Principal Executive Officer					X
32.2	Section 1350 Certification of Principal Financial Officer					X

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
101	Attached as Exhibit 101 to this report are the following documents formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets at December 31, 2019 and 2018; (ii) Consolidated Statements of Operations for the years ended December 31, 2019, 2018, and 2017; (iii) Consolidated Statements of Comprehensive Loss for the years ended December 31, 2019, 2018, and 2017; (iv) Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2019, 2018, and 2017; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2019, 2018, and 2017; and (vi) Notes to Consolidated Financial Statements					

(a) Management contract or compensatory plan or arrangement.

ITEM 16. FORM 10-K SUMMARY

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on March 13, 2020.

OVERSTOCK.COM, INC.

By: /s/ JONATHAN E. JOHNSON III

Jonathan E. Johnson III

Chief Executive Officer

(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Jonathan E. Johnson III and Anthony D. Strong, his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and conforming all that said attorney-in-fact, or his or their substitute or substitutes, may do or cause to be done by virtue hereof.

Signature	Title	Date
<u>/s/ JONATHAN E. JOHNSON III</u> Jonathan E. Johnson III	Chief Executive Officer, President, Medici Ventures, and Director (Principal Executive Officer)	3/13/2020
<u>/s/ ALLISON H. ABRAHAM</u> Allison H. Abraham	Chairwoman of the Board	3/13/2020
<u>/s/ ANTHONY D. STRONG</u> Anthony D. Strong	Acting Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	3/13/2020
<u>/s/ BARCLAY F. CORBUS</u> Barclay F. Corbus	Director	3/13/2020
<u>/s/ JOSEPH J. TABACCO, JR.</u> Joseph J. Tabacco, Jr.	Director	3/13/2020
<u>/s/ ROBERT J. SHAPIRO</u> Robert J. Shapiro	Director	3/13/2020

DESCRIPTION OF SECURITIES REGISTERED UNDER SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following information describes our common stock, par value \$0.0001 per share, which is the only class of our securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, as well as certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws. This description is only a summary. For a complete statement of the terms and rights of the common stock, you should also refer to our amended and restated certificate of incorporation and amended and restated bylaws which are filed as exhibits to our annual reports on Form 10-K filed with the SEC, as well as the General Corporation Law of the State of Delaware (“DGCL”), including Section 203.

Capital Stock

Our authorized capital stock consists of 100,000,000 shares of common stock, par value \$0.0001 per share, and 5,000,000 shares of preferred stock, par value \$0.0001 per share (4,630,000 shares of which have been designated as Digital Voting Series A-1 Preferred Stock and 370,000 shares of which have been designated as Voting Series B Preferred Stock). Our board of directors may establish the rights, powers and preferences of undesignated preferred stock from time to time. Our board of directors is authorized, without stockholder approval except as required by the listing standards of the Nasdaq Global Market, to issue additional shares of our authorized capital stock.

Common Stock*Voting Rights*

The holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Our amended and restated certificate of incorporation prohibits cumulative voting. Rather, the election of directors shall be decided by a plurality vote of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. With respect to matters other than the election of directors, if a quorum is present, the affirmative vote of a majority of the shares represented and voting at a duly held meeting (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the stockholders, unless the vote of a greater number or a vote by classes is required by law, by our amended and restated certificate of incorporation or by our amended and restated bylaws. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Our amended and restated certificate of incorporation prohibits stockholders from taking action by written consent in lieu of a meeting.

Dividend Rights

Subject to any preferential rights of holders of any outstanding shares of preferred stock, holders of our common stock are entitled to receive ratably any dividends or other distributions that may be declared from time to time by the board of directors out of funds legally available therefor. We have never declared or paid any cash dividends on our common stock. We currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the board deems relevant.

Liquidation Rights

In the event of our liquidation, dissolution or winding up, holders of our common stock would be entitled to share ratably in our assets remaining after the payment of liabilities, subject to prior distribution rights of holders of any shares of preferred stock then outstanding.

Preemption, Conversion, and Redemption Rights

Holders of our common stock have no preemptive or conversion rights or other subscription rights, and there are no redemption provisions applicable to the common stock. The outstanding shares of common stock are fully paid and non-assessable. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of our outstanding preferred stock and of any series of preferred stock that we may designate and/or issue in the future.

Board of Directors

The board of directors is divided into three classes designated as Class I, Class II and Class III, respectively, with staggered three-year terms. As a result, only one class of directors is elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Directors are assigned to each class in accordance with a resolution or resolutions adopted by the board of directors. Each class consists, as nearly as may be possible, of one-third of the total number of directors constituting the entire board of directors. At each annual meeting of stockholders, the class of directors to be elected at such annual meeting is elected for a full term of three years. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. No stockholder will be permitted to cumulate votes at any election of directors. Directors may be removed by the affirmative vote of the holders of the outstanding shares of common stock only for cause.

Anti-Takeover Effects of Certain Provisions of Delaware Law

Provisions of Delaware law and of our amended and restated certificate of incorporation and amended and restated bylaws could make the acquisition of the company through a tender offer, a proxy contest or other means more difficult and could make the removal of incumbent officers and directors more difficult. These provisions to discourage inadequate takeover bids and to encourage persons seeking to acquire control of the company to first negotiate with our board of directors. We believe that the benefits provided by our ability to negotiate with the proponent of an unsolicited proposal would outweigh the disadvantages of discouraging these proposals. We believe the negotiation of an unsolicited proposal could result in terms more favorable to our stockholders.

We are subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years following the time the person became an interested stockholder, unless:

- prior to such time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to such time, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, an “interested stockholder” is a person who owns or, in certain circumstances, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting securities. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance.

This summary of the provisions of Section 203 of the DGCL does not purport to be complete and is qualified in its entirety by reference to our amended and restated certificate of incorporation, our amended and restated bylaws, and the DGCL.

Anti-Takeover Provisions of the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Certain provisions in our amended and restated certificate of incorporation and amended and restated bylaws summarized below could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous.

Preferred Stock

Under our amended and restated certificate of incorporation, the board of directors may issue, without further stockholder approval, shares of preferred stock in one or more series and may also set forth the voting powers, full or limited or none, of each such series of preferred stock, which the board could use to implement a stockholder rights plan (also known as a “poison pill”). The board of directors shall fix the designations, preferences and relative, participating, optional or other special rights of each such series of preferred stock and the qualifications, limitations or restrictions of such powers, designations, preferences or rights.

No Action by Written Consent

Under our amended and restated certificate of incorporation and amended and restated bylaws, stockholders of the company may not take action by written consent in lieu of a meeting.

Special Meetings of Stockholders

Under our amended and restated bylaws, special meetings of our stockholders may be called only by the board of directors, the chairman of the board, the chief executive officer, or the president of the company.

Advance Notice Requirements for Stockholders Proposals and Director Nominations

Under our amended and restated bylaws, for nominations for election to our board or for proposing matters that can be properly acted upon by stockholders at annual stockholder meetings, the stockholder must (i) provide timely notice thereof in writing and in proper form to the secretary of the corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by the amended and restated bylaws. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made.

Board of Directors and Vacancies

The authorized number of directors on the board of directors will be established from time to time by resolution of the board of directors. Vacancies arising through death, resignation, removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director.

Amendment of Our Amended and Restated Certificate of Incorporation

Our amended and restated certificate of incorporation provides that it may be amended only with the affirmative vote of a majority of the outstanding stock entitled to vote thereon.

Amendment of Our Amended and Restated Bylaws

The board of directors is expressly authorized to make, alter or repeal our amended and restated bylaws. Our amended and restated bylaws provide that stockholders are permitted to amend the amended and restated bylaws only with the approval of the holders of sixty-six and two-thirds percent (66²/3%) of the voting power of outstanding capital stock entitled to vote at an election of directors.

Forum Selection Clause

Under the amended and restated certificate of incorporation and the amended and restated bylaws, unless the company consents in writing to the selection of an alternative forum, the sole and exclusive forum for making certain types of claims will be a state or federal court located within the State of Delaware. This provision applies to (i) any derivative action or proceeding brought on behalf of the company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the company to the company or its stockholders, (iii) any action asserting a claim against the company or any director or officer or other employee of the company arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation and the amended and restated bylaws, or (iv) any action asserting a claim against the company or any director or officer or other employee of the company governed by the internal affairs doctrine.

Transfer Agent and Registrar

Our transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Listing

Our common stock is listed on the Nasdaq Global Market under the trading symbol “OSTK.”

tZERO GROUP, INC.
2017 EQUITY INCENTIVE PLAN
Adopted December 24, 2017, as amended through October 10, 2019

Section 1. Purpose. The purpose of this tZERO Group, Inc. 2017 Equity Incentive Plan is to encourage ownership of Common Stock or Tokens by eligible Employees, Directors and Consultants of the Company and to provide increased incentive for such Employees, Directors and Consultants to render services and to exert maximum effort for the business success of the Company. In addition, the Company expects that this Plan will further strengthen the identification of Employees, Directors and Consultants with the shareholders and token holders. Options to be granted under this Plan are not intended to qualify as incentive stock options pursuant to Section 422 of the Code.

Section 2. Definitions.

(a) **“Administrator”** means the Committee or the Board, as administrator of the Plan.

(b) **“Affiliate”** means, at the time of determination, any “parent” or “subsidiary” of the Company as such terms are defined in Rule 405. The Board will have the authority to determine the time or times at which “parent” or “subsidiary” status is determined within the foregoing definition.

(c) **“Applicable Laws”** means the requirements related to or implicated by the administration of the Plan under applicable state corporate law, United States federal and state securities laws, the Code and the applicable laws of any foreign country or jurisdiction where Awards are granted under the Plan.

(d) **“Award”** means a Nonqualified Stock Option, Restricted Stock Award, Restricted Stock Unit Award or Token Award granted under the Plan.

(e) **“Award Agreement”** means a written agreement, contract, certificate or other instrument or document evidencing the terms and conditions of an individual Award granted under the Plan which may, in the discretion of the Company, be transmitted electronically to any Participant. Each Award Agreement shall be subject to the terms and conditions of the Plan.

(f) **“Board”** means the Board of Directors of the Company, as constituted at any time.

(g) **“Cause”** means, unless the applicable Award Agreement provides otherwise:

(i) If the Employee is a party to an employment or service agreement with the Company and such agreement provides for a definition of Cause, the definition contained therein; or

(ii) If no such agreement exists, or if such agreement does not define Cause: (A) failure to perform such duties as are reasonably requested by the Board; (B) material breach of any agreement with the Company, or a material violation of the Company’s code of conduct or other written policy; (C) commission of, or plea of guilty or no contest to, a felony or a crime involving moral turpitude or the commission of any other act involving willful malfeasance or material fiduciary breach with respect to the Company; (D) use of illegal drugs or abuse of alcohol that materially impairs the Participant’s ability to perform his or her duties to the Company; or (E) gross negligence or willful misconduct with respect to the Company.

(h) **“Change in Control”** means:

(i) Overstock.com, Inc., a Delaware corporation (“Overstock”), together with any entity or entities directly or indirectly controlled by Overstock, becomes the legal or beneficial owner of a number of shares of stock of the Company having less than a majority of the total voting power of the then outstanding stock of the Company; or

(ii) a Qualified IPO.

Notwithstanding anything herein to the contrary, and only to the extent that an Award is subject to Section 409A of the Code and payment of the Award pursuant to the application of the definition of “Change

in Control” above would cause such Award not to otherwise comply with Section 409A of the Code, payment of an Award may occur upon a “Change in Control” only to the extent that the event constitutes a “change in the ownership or effective control” of the Company or a “change in the ownership of a substantial portion of the assets” of the Company under Section 409A of the Code and the applicable Internal Revenue Service and Treasury Department regulations thereunder.

(i) **“Code”** means the Internal Revenue Code of 1986, as it may be amended from time to time. Any reference to a section of the Code shall be deemed to include a reference to any regulations promulgated thereunder.

(j) **“Committee”** means a committee that may be appointed by the Board to administer the Plan in accordance with Section 3(d) and Section 3(e).

(k) **“Common Stock”** means the common stock of the Company.

(l) **“Company”** means tZERO Group Inc., a Delaware corporation, and any successor thereto.

(m) **“Consultant”** means any individual who is engaged by the Company to render consulting or advisory services for the Company, whether or not compensated for such services.

(n) **“Continuous Service”** means that the Participant’s service (either as an employee or dedicated full-time contractor) with the Company is not interrupted or terminated; provided, that any interruption of a Participant’s service with the Company as a result of the Participant transferring their service to any Affiliate, Overstock or any company in which Overstock or Medici Ventures, Inc. directly or indirectly owns greater than 30% of the issued and outstanding voting stock (or equivalent interests) at the time their service is transferred shall not be considered an interruption. If any Award is subject to Section 409A of the Code, the determination of Continuous Service shall be made in a manner consistent with Section 409A of the Code. The Administrator or its delegate, in its sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal or family leave of absence.

(o) **“Detrimental Activity”** means any of the following: (i) unauthorized disclosure of any confidential or proprietary information of the Company; (ii) any activity that would be grounds to terminate the Participant’s employment or service with the Company for cause; (iii) the breach of any non-competition, non-solicitation, non-disparagement or other agreement containing restrictive covenants, with the Company; (iv) fraud or conduct contributing to any financial restatements or irregularities, as determined by the Administrator in its sole discretion; or (v) any other conduct or act determined to be materially injurious, detrimental or prejudicial to any interest of the Company, as determined by the Administrator in its sole discretion.

(p) **“Director”** means a member of the Board.

(q) **“Effective Date”** shall mean the date as of which this Plan is adopted by the Board.

(r) **“Employee”** means any person, including an officer, employed by, and providing direct services to, the Company.

(s) **“Fair Market Value”** means, on a given date, (i) if there is a public market for the shares of Common Stock or Tokens on such date, the closing price of the shares or tokens as reported on such date on the principal national securities exchange on which the shares or tokens are listed or, if no sales of shares or tokens have been reported on any national securities exchange, then the immediately preceding date on which sales of the shares or tokens have been so reported or quoted, and (ii) if there is no public market for the shares of Common Stock or Tokens on such date, then the fair market value shall be determined by the Administrator in good faith after taking into consideration all factors which it deems appropriate, including, without limitation, Section 409A of the Code, with the intention that Options granted under this Plan shall not constitute deferred compensation subject to Section 409A of the Code.

(t) **“Grant Date”** means the date on which the Administrator adopts a resolution, or takes other appropriate action, expressly granting an Award to a Participant that specifies the key terms and conditions of the Award or, if a later date is set forth in such resolution, then such date as is set forth in such resolution.

(u) **“Option”** means an option to purchase Common Stock granted pursuant to the Plan that by its terms does not qualify or is not intended to qualify as an incentive stock option under Section 422 of the Code.

(v) **“Option Exercise Price”** means the price at which a share of Common Stock may be purchased upon the exercise of an Option.

(w) **“Participant”** means an eligible person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

(x) **“Plan”** means this tZERO Group, Inc. 2017 Equity Incentive Plan, as amended and/or amended and restated from time to time.

(y) **“Qualified IPO”** means a firm commitment underwritten public offering of the Company’s common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, with aggregate offering proceeds to the Company of not less than \$20 million (net of underwriting discounts and commissions) and a listing of the Common Stock on a national securities exchange.

(z) **“Restricted Stock Award”** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 7.

(aa) **“Restricted Stock Unit Award”** means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 8.

(ab) **“Token Award”** means an award of Tokens, or an award denominated in Tokens, which is granted pursuant to the terms and conditions of Section 9 and which may consist of a present grant of Tokens (with or without vesting restrictions) or the right to receive Tokens in the future (by grant of units convertible into Tokens).

(ac) **“Tokens”** means the Preferred Equity Tokens, Series A of the Company, each represented by a digital token.

Section 3. Administration.

(a) **Authority of Administrator.** The Plan shall be administered by the Administrator, which shall be the Committee or, in the Board’s sole discretion, the Board. Subject to the terms of the Plan, the Committee’s charter and Applicable Laws, and in addition to other express powers and authorization conferred by the Plan, the Administrator shall have the authority:

- (i) to construe and interpret the Plan and apply its provisions;
- (ii) to promulgate, amend, and rescind rules and regulations relating to the administration of the Plan;
- (iii) to authorize any person to execute, on behalf of the Company, any instrument required to carry out the purposes of the Plan;
- (iv) to delegate its authority to one or more officers of the Company;
- (v) to determine when Awards are to be granted under the Plan and the applicable Grant Date;
- (vi) from time to time to select, subject to the limitations set forth in this Plan, those Participants to whom Awards shall be granted;
- (vii) to determine the number of shares of Common Stock or Tokens to be made subject to each Award;
- (viii) to prescribe the terms and conditions of each Award, including, without limitation, the medium of payment and vesting provisions, and to specify the provisions of the Award Agreement relating to such grant;
- (ix) to amend any outstanding Awards, including for the purpose of modifying the time or manner of vesting, or the term of any outstanding Award; provided, however, that if any such amendment impairs a Participant’s rights or increases a Participant’s obligations under his or her Award or creates or increases a

Participant's federal income tax liability with respect to an Award, such amendment shall also be subject to the Participant's consent;

(x) to determine the duration and purpose of leaves of absences which may be granted to a Participant without constituting termination of their employment for purposes of the Plan, which periods shall be no shorter than the periods generally applicable to Employees under the Company's employment policies;

(xi) to make decisions with respect to outstanding Awards that may become necessary upon a change in corporate control or an event that triggers anti-dilution adjustments;

(xii) to interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; and

(xiii) to exercise discretion to make any and all other determinations which it determines to be necessary or advisable for the administration of the Plan.

(b) Acquisitions and Other Transactions. The Administrator may, from time to time, assume outstanding awards granted by another entity, whether in connection with an acquisition of such other entity or otherwise, by either (i) granting an Award under the Plan in replacement of or in substitution for the award assumed by the Company, or (ii) treating the assumed award as if it had been granted under the Plan if the terms of such assumed award could be applied to an Award granted under the Plan. Such assumed award shall be permissible if the holder of the assumed award would have been eligible to be granted an Award hereunder if the other entity had applied the rules of this Plan to such grant. The Administrator may also grant Awards under the Plan in settlement of or in substitution for outstanding awards or obligations to grant future awards in connection with the Company or an affiliate acquiring another entity, an interest in another entity, or an additional interest in an affiliate whether by merger, stock purchase, asset purchase or other form of transaction.

(c) Administrator Decisions Final. All decisions made by the Administrator pursuant to the provisions of the Plan shall be final and binding on the Company and the Participants, unless such decisions are determined by a court having jurisdiction to be arbitrary and capricious.

(d) Delegation. The Administrator shall have the power to delegate to a subcommittee any of the administrative powers the Administrator is authorized to exercise (and references in this Plan to the Administrator shall thereafter be to the committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. If a Committee serves as the Administrator, the Board may abolish such Committee at any time and revest in the Board the administration of the Plan. The members of any Committee designated as Administrator shall be appointed by and serve at the pleasure of the Board. From time to time, the Board may increase or decrease the size of the Committee, add additional members to, remove members (with or without cause) from, appoint new members in substitution therefor, and fill vacancies, however caused, in the Committee. The Board or Committee, as applicable, shall act pursuant to a vote of the majority of its members or, in the case of a Committee comprised of only two members, the unanimous consent of its members, whether present or not, or by the written consent of the majority of its members and minutes shall be kept of all of its meetings and copies thereof shall be provided to the Board. Subject to the limitations prescribed by the Plan and the Board, the Administrator may establish and follow such rules and regulations for the conduct of its business as it may determine to be advisable.

(e) Committee Composition. Except as otherwise determined by the Board, any Committee designated as Administrator shall consist solely of two or more members of the Board appointed to the Committee from time to time by the Board.

(f) Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or the Committee, and to the extent allowed by Applicable Laws, the Administrator shall be indemnified by the Company against the reasonable expenses, including attorney's fees, actually incurred in connection with any action, suit or proceeding or in connection with any appeal therein, to which the Administrator may be party by reason of any action taken or failure to act under or in connection with the Plan or any Award granted under the Plan, and against all amounts paid by the Administrator in settlement thereof (provided, however, that the settlement has been approved by the Company, which approval shall not be unreasonably withheld) or paid by the Administrator in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that the Administrator did not act in good faith and in a manner which such person reasonably believed to be in the best interests of the Company, or in the case of a criminal proceeding, had no reason to believe that

the conduct complained of was unlawful; provided, however, that within 60 days after institution of any such action, suit or proceeding, the Administrator shall, in writing, offer the Company the opportunity at its own expense to handle and defend such action, suit or proceeding.

Section 4. Shares and Tokens Subject to the Plan.

(a) Subject to adjustment in accordance with Section 13, (i) a total of 12,000,000 of the authorized shares of Common Stock shall be available for the grant of Awards under the Plan, and (ii) a total of 1,000,000 Tokens shall be available for the grant of Awards under the Plan.

(b) Shares of Common Stock available for distribution under the Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares. Tokens available for distribution under the Plan may consist, in whole or in part, of authorized and unissued digital tokens.

(c) Shares of Common Stock or Tokens shall be deemed to have been issued under the Plan only to the extent actually issued and delivered pursuant to the exercise or settlement of an Award. Any shares of Common Stock or Tokens subject to an Award that is cashed-out, canceled, forfeited or expires prior to exercise or realization, either in full or in part, shall again become available for issuance under the Plan. Shares or Tokens subject to an Award under the Plan shall again be made available for issuance or delivery under the Plan if such shares or tokens are shares or tokens tendered in payment of an Award or if such shares or tokens are delivered or withheld by the Company to satisfy any tax withholding obligation.

(d) If the Administrator authorizes the assumption of awards pursuant to Section 3(b) or Section 14 hereof, the assumption will reduce the number of shares or tokens available for issuance under the Plan in the same manner as if the assumed awards had been granted under the Plan.

Section 5. Eligibility. Awards may be granted to Employees, Directors and Consultants. A Participant must be an Employee, Director or Consultant at the time the Award is granted. An Employee, Director or Consultant who has been granted an Award hereunder may be granted an additional Award or Awards, if the Administrator shall so determine.

Section 6. Option Provisions. Each Option granted under the Plan shall represent an option to purchase Common Stock and shall be evidenced by an Award Agreement. Each Option so granted shall be subject to the conditions set forth in this Section 6, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. The Company shall have no liability to any Participant or any other person if an Option is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code and the terms of such Option do not satisfy the requirements of Section 409A of the Code. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) Term. The term of an Option granted under the Plan shall be determined by the Administrator; provided, however, no Option shall be exercisable after the expiration of 15 years from the Grant Date.

(b) Option Exercise Price. Unless otherwise determined by the Administrator, the Option Exercise Price of each Option shall be not less than 100% of the Fair Market Value of the Common Stock subject to the Option on the Grant Date. Notwithstanding the foregoing, an Option may be granted with an Option Exercise Price lower than that set forth in the preceding sentence if such Option is granted in a manner satisfying the provisions of Section 409A of the Code or pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 409A of the Code.

(c) Method of Exercise. Options shall be exercised by the delivery by the Participant of written notice to the Secretary of the Company setting forth the number of shares of Common Stock with respect to which the Option is being exercised. The Option Exercise Price shall be paid, to the extent permitted by Applicable Laws, either (i) in cash or by certified or bank check at the time the Option is exercised or (ii) by any of the following means: (A) by delivery to the Company of other shares of Common Stock, duly endorsed for transfer to the Company, with a Fair Market Value on the date of delivery equal to the Option Exercise Price (or portion thereof) due for the number of shares being acquired; (B) by a “net exercise” procedure effected by withholding the minimum number of shares of Common Stock otherwise issuable in respect of an Option that are needed to pay the Option Exercise Price; (C) by any combination of the foregoing methods; or (D) in any other form of legal consideration that may be reasonably acceptable to the Administrator. Unless otherwise specifically provided in the Option, the Option Exercise Price that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of Common Stock that

have been held for more than six months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes).

Notice may also be delivered by fax provided that the Option Exercise Price of such shares is received by the Company via wire transfer on the same day the fax transmission is received by the Company. The notice shall specify the address to which the certificates for such shares are to be mailed. An Option shall be deemed to have been exercised immediately prior to the close of business on the date (i) written notice of such exercise and (ii) payment in full of the Option Exercise Price for the number of shares for which Options are being exercised, are both received by the Company and the Participant shall be treated for all purposes as the record holder of such shares of Common Stock as of such date. As promptly as practicable after receipt of such written notice and payment, the Company shall deliver to the Participant certificates for the number of shares with respect to which such Option has been so exercised, issued in the Participant's name or such other name as the Participant directs; provided, however, that such delivery shall be deemed effected for all purposes when a stock transfer agent of the Company shall have deposited such certificates in the United States mail, addressed to the Participant at the address specified pursuant to this Section 6(c).

(d) Transferability of an Option. An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant. Notwithstanding the foregoing, the Participant may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option.

(e) Vesting of Options. Each Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Administrator may deem appropriate. The vesting provisions of individual Options may vary. No Option may be exercised for a fraction of a share of Common Stock. The Administrator may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

(f) Termination of Continuous Service. Unless otherwise provided in an Award Agreement or in an employment agreement between a Participant and the Company, in the event a Participant's Continuous Service terminates (other than upon the Participant's death or disability), the Participant may exercise his or her Option (to the extent that such Option has vested and the Participant was entitled to exercise such Option as of the date of termination) at any time prior to the expiration of the term of the Option as set forth in the Award Agreement. If, after termination, the Participant does not exercise his or her Option within the time specified in the Award Agreement, the Option shall terminate.

(g) Disability of Participant. Unless otherwise provided in an Award Agreement, in the event that a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option (to the extent that such Option has vested and the Participant was entitled to exercise such Option as of the date of termination) at any time prior to the expiration of the term of the Option as set forth in the Award Agreement. If, after termination, the Participant does not exercise his or her Option within the time specified herein or in the Award Agreement, the Option shall terminate.

(h) Death of Participant. Unless otherwise provided in an Award Agreement, in the event a Participant's Continuous Service terminates as a result of the Participant's death, then the Option may be exercised (to the extent the Participant was entitled to exercise such Option as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Participant's death at any time prior the expiration of the term of such Option as set forth in the Award Agreement. If, after the Participant's death, the Option is not exercised within the time specified herein or in the Award Agreement, the Option shall terminate.

(i) Detrimental Activity. Unless otherwise provided in an Award Agreement, all outstanding Options (whether or not vested) shall immediately terminate and cease to be exercisable on the date on which a Participant engages in Detrimental Activity.

(j) No Rights as Shareholder. No Participant shall have any rights as a shareholder with respect to shares covered by an Option until the Option is exercised by written notice and accompanied by payment as provided in Section 6(c).

Section 7. Restricted Stock Awards. Each Award Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Award Agreements may change from time to time, and the terms and conditions of separate Award Agreements need not be identical. Each Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(a) Consideration. A Restricted Stock Award may be awarded in consideration for (i) cash, check, bank draft, electronic funds, wire transfer or money order payable to the Company, (ii) past services to the Company or an Affiliate or (iii) any other form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(b) Vesting. Shares of Common Stock awarded under the Restricted Stock Award may be subject to forfeiture to the Company in accordance with a vesting schedule (which may be referred to as a schedule for lapsing of the Company's unvested share repurchase rights) to be determined by the Board.

(c) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Award Agreement, the shares of Common Stock that have not vested will be forfeited on the Participant's termination of Continuous Service, provided that if a Participant's Continuous Service terminates, the applicable Award Agreement may provide that the Company may receive either through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Award Agreement.

(d) Transferability. The right to acquire shares of Common Stock under a Restricted Stock Award will not be transferable by the Participant. Once the shares of Common Stock are issued, such shares of Common Stock will not be transferable by the Participant, although the Board may allow the holder to transfer vested shares, but only on the terms and conditions in the Award Agreement, and only so long as the Common Stock awarded under the Award Agreement remains subject to the terms of the Award Agreement in the hands of the recipient.

(e) Dividends. In the absence of an Award Agreement expressly providing otherwise, any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

Section 8. Restricted Stock Unit Awards. Each Award Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. The terms and conditions of Award Agreements may change from time to time, and the terms and conditions of separate Award Agreements need not be identical. Each Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(a) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant on delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(b) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(c) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Award Agreement.

(d) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(e) Dividend Equivalents. Dividend equivalents may be credited on shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Award Agreement to which they relate.

(f) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Award Agreement, the unvested portion of the Restricted Stock Unit Award that has not vested will be forfeited on the Participant's termination of Continuous Service.

Section 9. Token Awards. All terms and conditions contained in the Plan and Award Agreements related to Token Awards are subject to the Certificate of Designation of Preferred Equity Tokens, Series A of the Company (the "**Certificate of Designation**"). Each Award Agreement related to Token Awards will be in such form and will contain such terms and conditions as the Board deems appropriate. The terms and conditions of Award Agreements related to Token Awards may change from time to time, and the terms and conditions of separate Award Agreements related to Token Awards need not be identical. Each Award Agreement related to Token Awards will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(a) Consideration. At the time of grant of a Token Award, the Board will determine the consideration, if any, to be paid by the Participant, including but not limited to (i) cash, check, bank draft, electronic funds, wire transfer or money order payable to the Company, (ii) past services to the Company or an Affiliate or (iii) any other form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(b) Vesting. At the time of the grant of a Token Award, the Board may impose such restrictions on or conditions to the vesting of the Token Award, if any, as it, in its sole discretion, deems appropriate.

(c) Payment. In the case of a Token Award that is in the form of a grant of units convertible into Tokens, such Award may be settled by the delivery of Tokens, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Award Agreement.

(d) Transferability and Additional Restrictions. The right to acquire Tokens under a Token Award will not be transferable by the Participant. Once the Tokens are issued, the Tokens will not be transferable by the Participant, although the Board may allow the holder to transfer unvested Tokens but only on the terms and conditions in the Award Agreement, and only so long as the Tokens awarded in the Award Agreement remain subject to the terms of the Award Agreement in the hands of the recipient. In addition, at the time of grant of a Token Award that is in the form of a grant of units convertible into Tokens, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the Tokens (or their cash equivalent) subject to a Token Award to a time after the vesting of such Token Award.

(e) Dividends or Dividend Equivalents. All dividends or dividend equivalents in respect of Token Awards shall be governed by the terms of and paid in accordance with the Certificate of Designation. In the absence of an Award Agreement expressly providing otherwise, any dividends paid on Token Awards will be subject to the same vesting and forfeiture restrictions as apply to the Tokens subject to the Token Award to which they relate. Dividend equivalents may be credited on Tokens covered by a Token Award that are in the form of a grant of units convertible into Tokens, as determined by the Board and contained in Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional Tokens covered by the Token Award in such manner as determined by the Board. Any additional Tokens covered by the Token Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Award Agreement to which they relate.

(f) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Award Agreement, the portion of the Token Award that has not vested will be forfeited on the Participant's termination of Continuous Service, provided that if a Participant's Continuous Service terminates, the applicable Award Agreement may provide that the Company may receive either through forfeiture or a repurchase right the portion of the Token Award held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Award Agreement.

Section 10. Securities Law Compliance.

(a) Securities Registration. No Awards shall be granted and no shares of Common Stock or Tokens shall be issued and delivered under the Plan unless and until the Company and/or the Participant have complied with all applicable federal and state registration, listing and/or qualification requirements and all other requirements of law or of any regulatory agencies having jurisdiction.

(b) Representations; Legends. The Administrator may, as a condition to the grant of any Award and the issuance of any shares of Common Stock or Tokens, require a Participant to (i) represent in writing that the shares of Common Stock or Tokens received in connection with such Award are being acquired for investment and not with a view to distribution, and (ii) make such other representations and warranties as are deemed appropriate by counsel to the Company. Each paper, electronic or digital certificate representing shares of Common Stock or Tokens acquired under the Plan shall bear a legend in such form as the Company reasonably deems appropriate.

Section 11. Use of Proceeds. Proceeds from the sale of Common Stock or Tokens pursuant to Awards, or upon exercise thereof, shall constitute general funds of the Company.

Section 12. Miscellaneous.

(a) Acceleration of Exercisability and Vesting. The Administrator shall have the power to accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Award stating the time at which it may first be exercised or the time during which it will vest.

(b) Shareholder and Token Holder Rights. Except as provided in the Plan or an Award Agreement, no Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock or Tokens subject to an Award unless and until such Participant has satisfied all requirements for exercise or settlement of the Award pursuant to its terms and no adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property) or distributions of other rights for which the record date is prior to the date such Common Stock certificate or digital token certificate is issued, except as provided in Section 13 hereof.

(c) No Employment or Other Service Rights. Nothing in the Plan or any instrument executed or Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company in the capacity in effect at the time the Award was granted or shall affect the right of the Company to terminate (i) the employment of an Employee with or without notice and with or without Cause or (ii) the service of a Director pursuant to the By-laws of the Company, and any applicable provisions of the corporate law of the state in which the Company is incorporated, as the case may be. The cause of any termination of employment or service shall be determined by the Administrator, and its determination shall be final.

(d) Approved Leave of Absence. For purposes of the Plan, no termination of employment by an Employee shall be deemed to result from an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the Employee's right to reemployment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing, in either case, except to the extent inconsistent with Section 409A of the Code if the applicable Award is subject thereto.

(e) Withholding Obligations. Subject to the discretion of the Administrator, a Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under an Award by any of the following means (in addition to the Company's right to withhold from any amount paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares of Common Stock from the shares of Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of Common Stock under the Award, provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company previously owned and unencumbered shares of Common Stock of the Company. Subject to the discretion of the Administrator, a Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Tokens under an Award by any of the following means (in addition to the Company's right to withhold from any amount paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold Tokens from the Tokens otherwise issuable to the Participant as a result of the exercise or acquisition of Tokens under the Award, provided, however, that no Tokens are withheld with a value exceeding

the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company previously owned and unencumbered Tokens.

Section 13. Adjustment Upon Changes in Stock or Tokens.

(a) Adjustment Upon Changes in Stock. In the event of changes in the outstanding Common Stock or in the capital structure of the Company by reason of any stock or extraordinary cash dividend, stock split, reverse stock split, an extraordinary corporate transaction such as any recapitalization, reorganization, merger, consolidation, combination, exchange, or other relevant change in capitalization occurring after the Grant Date of any Award, Awards granted under the Plan and any Award Agreements, the exercise price of Options and the maximum number of shares of Common Stock subject to Awards stated in Section 4 will be equitably adjusted or substituted, as to the number, price or kind of a share of Common Stock or other consideration subject to such Awards to the extent necessary to preserve the economic intent of such Award. In the case of adjustments made pursuant to this Section 13, unless the Administrator reasonably determines that such adjustment is in the best interests of the Company, the Administrator shall ensure that any adjustments under this Section 13 will not constitute a modification of Options within the meaning of Section 409A of the Code. Except as herein before expressly provided, (a) the issuance by the Company of shares of stock or any class of securities convertible into shares of stock of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Company convertible into such shares or other securities, (b) the payment of a dividend in property other than Common Stock, or (c) the occurrence of any similar transaction, and in any case whether or not for fair value, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Common Stock subject to Awards theretofore granted or the purchase price per share, unless the Administrator shall reasonably determine, in its sole discretion, that an adjustment is necessary to provide equitable treatment to Participants.

(b) Adjustment Upon Changes in Tokens. In the event of changes in the outstanding Tokens or in the capital structure of the Company by reason of any token or extraordinary cash dividend, token split, reverse token split, an extraordinary corporate transaction such as any recapitalization, reorganization, merger, consolidation, combination, exchange, or other relevant change in capitalization occurring after the Grant Date of any Award, Awards granted under the Plan and any Award Agreements, the maximum number of Tokens subject to Awards stated in Section 4 may be equitably adjusted or substituted, as to the number, price or kind of a Token or other consideration subject to such Awards to the extent necessary to preserve the economic intent of such Award. Except as herein before expressly provided, (a) the issuance by the Company of tokens or any class of securities convertible into tokens of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor, or upon conversion of tokens or obligations of the Company convertible into such tokens or other securities, (b) the payment of a dividend in property other than Tokens, or (c) the occurrence of any similar transaction, and in any case whether or not for fair value, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number of Tokens subject to Awards theretofore granted or the purchase price per token, unless the Administrator shall reasonably determine, in its sole discretion, that an adjustment is necessary to provide equitable treatment to Participants.

Section 14. Effect of Change in Control.

(a) In the event of a Change in Control:

(i) the Administrator shall accelerate, vest or cause the restrictions to lapse with respect to all or any portion of any Award and the Award shall be deemed fully vested in accordance with the terms of the Plan as of immediately prior to the Change in Control; and

(ii) the Administrator may provide written notice to Participants that for a period as determined by the Administrator prior to the Change in Control, after accounting for the actions outlined in Section 14(a)(i), such Awards shall be exercisable, to the extent applicable, as to all shares of Common Stock subject thereto and upon the occurrence of the Change in Control, any Awards not so exercised shall terminate and be of no further force and effect.

(b) The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to all or substantially all of the assets and business of the Company and its affiliates, taken as a whole.

Section 15.**Amendment of the Plan and Awards.**

- (a) **Amendment of the Plan.** The Board at any time, and from time to time, may amend or terminate the Plan. However, except as provided in Section 13 relating to adjustments upon changes in Common Stock or Tokens and Section 15(c), no amendment shall be effective unless approved by the shareholders of the Company to the extent shareholder approval is necessary to satisfy any Applicable Laws. At the time of such amendment, the Board shall determine, upon advice from counsel, whether such amendment will be contingent on shareholder approval.
- (b) **Shareholder Approval.** The Board may, in its sole discretion, submit any other amendment to the Plan for shareholder approval.
- (c) **Contemplated Amendments.** It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to the nonqualified deferred compensation provisions of Section 409A of the Code and/or to bring the Plan and/or Awards granted under it into compliance therewith.
- (d) **No Impairment of Rights.** Rights under any Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.
- (e) **Amendment of Awards.** The Administrator at any time, and from time to time, may amend the terms of any one or more Awards; provided, however, that the Administrator may not affect any amendment which would otherwise constitute an impairment of the rights under any Award unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

Section 16.**General Provisions.**

- (a) **Clawback; Forfeiture.** Notwithstanding any other provisions in this Plan, the Administrator may, in its sole discretion, provide in an Award Agreement or otherwise that the Administrator may cancel such Award if the Participant has engaged in or engages in any Detrimental Activity. The Administrator may, in its sole discretion, also provide in an Award Agreement or otherwise that (i) if the Participant has engaged in or engages in Detrimental Activity, the Participant will forfeit any gain realized on the vesting or settlement of any Award, and must repay the gain to the Company and (ii) if the Participant receives any amount in excess of what the Participant should have received under the terms of the Award for any reason (including, without limitation, by reason of a financial restatement, mistake in calculations or other administrative error), then the Participant shall be required to repay any such excess amount to the Company. Without limiting the foregoing, all Awards shall be subject to reduction, cancellation, forfeiture or recoupment to the extent necessary to comply with Applicable Laws, government regulation or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).
- (b) **Sub-plans.** The Administrator may from time to time establish sub-plans under the Plan for purposes of satisfying blue sky, securities, tax or other laws of various jurisdictions in which the Company intends to grant Awards. Any sub-plans shall contain such limitations and other terms and conditions as the Administrator determines are necessary or desirable. All sub-plans shall be deemed a part of the Plan, but each sub-plan shall apply only to the Participants in the jurisdiction for which the sub-plan was designed.
- (c) **Unfunded Plan.** The Plan shall be unfunded. Neither the Company, the Board nor the Administrator shall be required to establish any special or separate fund or to segregate any assets to assure the performance of its obligations under the Plan.
- (d) **Recapitalizations.** Each Award Agreement shall contain provisions required to reflect the provisions of Section 13.
- (e) **Delivery.** Upon settlement of an Award granted under this Plan, the Company shall issue Common Stock or Tokens or pay any amounts due within a reasonable period of time thereafter. Subject to any statutory or regulatory obligations the Company may otherwise have, for purposes of this Plan, 30 days shall be considered a reasonable period of time.

(f) No Fractional Shares or Tokens. No fractional shares of Common Stock or fractional Tokens shall be issued or delivered pursuant to the Plan. The Administrator shall determine whether cash, additional Awards or other securities or property shall be issued or paid in lieu of fractional shares of Common Stock or fractional Tokens or whether any fractional shares or fractional Tokens should be rounded, forfeited or otherwise eliminated.

(g) Other Provisions. The Award Agreements authorized under the Plan may contain such other provisions not inconsistent with this Plan, including, without limitation, restrictions upon the exercise of the Awards, as the Administrator may deem advisable.

(h) Section 409A. Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. Any payments described in the Plan that are due within the “short-term deferral period” as defined in Section 409A of the Code shall not be treated as deferred compensation unless Applicable Laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6) month period immediately following a Participant’s termination of Continuous Service shall instead be paid on the first payroll date after the six-month anniversary of the Participant’s separation from service (or the Participant’s death, if earlier). Notwithstanding the foregoing, neither the Company nor the Administrator shall have any obligation to take any action to prevent the assessment of any additional tax or penalty on any Participant under Section 409A of the Code and neither the Company nor the Administrator will have any liability to any Participant for such tax or penalty.

(i) Right of Repurchase. An Award may include a provision whereby the Company may elect to repurchase all or any part of the shares of Common Stock or Tokens acquired by the Participant. The terms of any repurchase option shall be specified in the Award Agreement. Unless otherwise determined by the Board and subject to compliance with applicable laws, the repurchase price for vested shares of Common Stock or vested Tokens will be the Fair Market Value of the shares of Common Stock or Tokens on the date of repurchase and the repurchase price for unvested shares of Common Stock or unvested Tokens will be the lower of (i) the Fair Market Value of the shares of Common Stock or Tokens on the date of repurchase or (ii) their original purchase price. The Company will not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time necessary to avoid classification of the Award as a liability for financial accounting purposes) have elapsed following delivery of shares of Common Stock or Tokens subject to the Award, unless otherwise specifically provided by the Board. The Board reserves the right to assign the Company’s right of repurchase.

(j) Right of First Refusal. An Award may also include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Participant of the intent to transfer all or any part of the shares of Common Stock or Tokens received under the Award. Except as expressly provided in this paragraph or in the Award Agreement, such right of first refusal shall otherwise comply with any applicable provisions of the bylaws of the Company. The Board reserves the right to assign the Company’s right of first refusal.

(k) Beneficiary Designation. Each Participant under the Plan may from time to time name any beneficiary or beneficiaries by whom any right under the Plan is to be exercised in case of such Participant’s death. Each designation will revoke all prior designations by the same Participant, shall be in a form reasonably prescribed by the Administrator and shall be effective only when filed by the Participant in writing with the Company during the Participant’s lifetime.

(l) Expenses. The costs of administering the Plan shall be paid by the Company.

(m) Severability. If any of the provisions of the Plan or any Award Agreement is held to be invalid, illegal or unenforceable, whether in whole or in part, such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions shall not be affected thereby.

(n) Plan Headings. The headings in the Plan are for purposes of convenience only and are not intended to define or limit the construction of the provisions hereof.

(o) Non-Uniform Treatment. The Administrator’s determinations under the Plan need not be uniform and may be made by it selectively among persons who are eligible to receive, or actually receive, Awards. Without limiting the generality of the foregoing, the Administrator shall be entitled to make non-uniform and selective determinations, amendments and adjustments, and to enter into non-uniform and selective Award Agreements.

Section 17. Termination or Suspension of the Plan. The Plan shall terminate automatically on the date that is ten (10) years after the Effective Date. No Award shall be granted pursuant to the Plan after such date, but Awards theretofore granted may extend beyond that date. The Board may suspend or terminate the Plan at any earlier date pursuant to Section 15(a) hereof. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

Section 18. Liability of Company. The Company and any affiliate which is in existence or hereafter comes into existence shall not be liable to a Participant or other persons as to:

(a) The non-issuance or sale of shares or Tokens as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares or Tokens hereunder; and

(b) Any tax consequence expected, but not realized, by any Participant or other person due to the exercise or settlement of any Award granted hereunder.

Section 19. Choice of Law. The law of the State of New York shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of law rules.

As adopted by the Board of Directors of the Company on December 24, 2017, as amended on May 21, 2018, June 7, 2018, March 15, 2019, May 13, 2019 and October 10, 2019.

tZERO GROUP, INC.
NOTICE OF STOCK OPTION GRANT

tZERO Group, Inc. (the “Company”), under its 2017 Equity Incentive Plan (as amended from time to time, the “Plan”), hereby grants to Optionee an option (the “Option”) to purchase the number of shares of Common Stock set forth below. The Option is subject to all of the terms and conditions as set forth in this notice (the “Grant Notice”), in the Option Agreement and in the Plan, both of which are incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Option Agreement will have the same definitions as in the Plan or the Option Agreement. If there is any conflict between the terms in the Option Agreement and the Plan, the terms of the Plan will control.

Optionee:

Type of Grant:

Nonstatutory Stock Option

Date of Grant:

Vesting Commencement Date:

Number of Shares Subject to Option:

Option Exercise Price (Per Share):

Total Exercise Price:

Expiration Date:

Vesting Schedule: The Option will vest over a three-year period with the first vesting date to occur on the Vesting Commencement Date. Subject to the Optionee’s Continuous Service on each vesting date, this Option will vest as to 1/3 of the total number of shares of Common Stock subject to the Option on each of the Vesting Commencement Date, the first anniversary of the Vesting Commencement Date and the second anniversary of the Vesting Commencement Date. Any fractional shares will be allocated to the first vesting tranche.

Additional Terms/Acknowledgements: Optionee acknowledges receipt of, and understands and agrees to, this Grant Notice, the Option Agreement and the Plan. If applicable, Optionee acknowledges that he or she has been made aware of the Company’s Rule 701(e) Information Statement (the “Information Statement”) for the Plan, and the Company encourages Optionee to review the Information Statement before exercising this Option. Optionee acknowledges and agrees that if Optionee exercises the Option without first reviewing the Information Statement (as drafted at such future date), Optionee is knowingly and voluntarily declining to review the Information Statement. As of the Date of Grant, this Grant Notice, the Option Agreement and the Plan set forth the entire understanding between Optionee and the Company regarding the Option and supersede all prior oral and written agreements with respect to the Option. By accepting the Option, Optionee consents to receive documents governing the Option by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company from time to time.

tZERO GROUP, Inc.

By: _____
Signature
Name: _____
Title: _____
Date: _____

Optionee:

By: _____
Signature
Name: _____
Date: _____

tZERO GROUP, INC.
NONQUALIFIED STOCK OPTION AGREEMENT

Pursuant to the Notice of Stock Option Grant (the “Grant Notice”) and this Nonqualified Stock Option Agreement (this “Option Agreement”), tZERO Group, Inc., a Delaware corporation (the “Company”) has granted Optionee (as defined in the Grant Notice) an option (the “Option”) under its 2017 Equity Incentive Plan (as amended from time to time, the “Plan”).

Section 1. Introduction. The Company has previously adopted the Plan for the purpose of providing eligible Employees, Directors and Consultants (as defined in the Plan) with increased incentive to render services, to exert maximum effort for the business success of the Company and to strengthen the identification of such individuals with the shareholders. The Company, acting through the Administrator (as defined in the Plan), has determined that its interests will be advanced by the issuance to Optionee of an Option under the Plan.

Section 2. Option. Subject to the terms and conditions contained herein, including Exhibit A, the Company hereby irrevocably grants to Optionee the Option to purchase from the Company the number of shares of the Company’s common stock, \$0.01 par value (“Common Stock”) set forth in the Grant Notice at the Option Exercise Price set forth in the Grant Notice.

Section 3. Vesting. The Option will vest as provided in the Grant Notice. Vesting will cease at the time the Optionee ceases to be in Continuous Service. Any portion of the Option that has not yet vested will be forfeited at the time the Optionee ceases to be in Continuous Service. Notwithstanding anything in this Option Agreement to the contrary, the Administrator, in its sole discretion, may waive the foregoing schedule of vesting and upon written notice to Optionee, accelerate the earliest date or dates on which any of the Options granted hereunder are exercisable.

Section 4. Procedure for Exercise. The Option herein granted may be exercised by the delivery by Optionee of written notice to the Secretary of the Company setting forth the number of shares of Common Stock with respect to which the Option is being exercised. The Option Exercise Price shall be paid, to the extent permitted by Applicable Laws, either (a) in cash or by certified or bank check at the time the Option is exercised or (b) by any of the following means: (i) by delivery to the Company of shares of Common Stock, duly endorsed for transfer to the Company, with a Fair Market Value on the date of delivery equal to the Option Exercise Price (or portion thereof) due for the number of shares being acquired; (ii) by a “net exercise” procedure effected by withholding the minimum number of shares of Common Stock otherwise issuable in respect of the Option that are needed to pay the Option Exercise Price; (iii) by any combination of the foregoing methods; or (iv) in any other form of legal consideration that may be reasonably acceptable to the Administrator. If the Option Exercise Price is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, it shall be paid only by shares of Common Stock that have been held for more than six months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes). Notice may also be delivered by fax provided that the Option Exercise Price of such shares is received by the Company via wire transfer on the same day the fax transmission is received by the Company. The notice shall specify the address to which the certificates for such shares are to be mailed. This Option shall be deemed to have been exercised immediately prior to the close of business on the date (i) written notice of such exercise and (ii) payment in full of the exercise price for the number of share for which Options are being exercised, are both received by the Company and Optionee shall be treated for all purposes as the record holder of such shares of Common Stock as of such date.

As promptly as practicable after receipt of such written notice and payment, the Company shall deliver to Optionee certificates for the number of shares with respect to which such Option has been so exercised, issued in Optionee’s name or such other name as Optionee directs; provided, however, that such delivery shall be deemed effected for all purposes when a stock transfer agent of the Company shall have deposited such certificates in the United States mail, addressed to Optionee at the address specified pursuant to this Section 4.

Section 5. Termination of Continuous Service. In the event Optionee’s Continuous Service terminates, Optionee may exercise the Option (to the extent that Optionee was entitled to exercise the Option as of the date of termination) at any time prior to the Expiration Date set forth in the Grant Notice. If, after termination, Optionee does not exercise the Option before the Expiration Date set forth in the Grant Notice, the Option shall terminate.

Section 6. Company’s Right of First Refusal. Before any shares of Common Stock subject to the Option (the “Shares”) held by the Optionee or any transferee (either being sometimes referred to herein as the “Holder”) may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 6 (the “Right of First Refusal”).

(a) Notice of Proposed Transfer. The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the bona fide cash price or other consideration for which the Holder proposes to transfer the Shares (the "Offered Price"), and the Holder shall offer the Shares at the Offered Price to the Company or its assignee(s).

(b) Exercise of Right of First Refusal. At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (c) below.

(c) Purchase Price. The purchase price ("Purchase Price") for the Shares purchased by the Company or its assignee(s) under this Section 6 shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the noncash consideration shall be determined by the Board of Directors of the Company in good faith.

(d) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(e) Holder's Right to Transfer. If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 6, then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within one hundred and twenty (120) days after the date of the Notice, that any such sale or other transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee agrees in writing that the provisions of this Section 6 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(f) Exception for Certain Family Transfers. Anything to the contrary contained in this Section 6 notwithstanding, the transfer of any or all of the Shares during the Optionee's lifetime or on the Optionee's death by will or intestacy to the Optionee's immediate family or a trust for the benefit of the Optionee's immediate family shall be exempt from the provisions of this Section 6. "Immediate Family" as used herein shall mean spouse (or domestic partner, as defined below), lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section 6, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 6. As used herein, a person will be deemed to be a "domestic partner" of another person if the two persons (1) reside in the same residence and plan to do so indefinitely, (2) have resided together for at least one year, (3) are each at least 18 years of age and mentally competent to consent to contract, (4) are not blood relatives any closer than would prohibit legal marriage in the state in which they reside, and (5) have each been the sole spouse equivalent of the other for the year prior to the transfer and plan to remain so indefinitely; provided that a person will not be considered a domestic partner if he or she is married to another person or has any other spouse equivalent.

(g) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to any Shares upon the earlier of (i) the first sale of Common Stock of the Company to the general public, or (ii) a Change in Control in which the successor corporation has equity securities that are publicly traded.

Section 7. Transferability. This Option shall not be trans-fer-able by Optionee otherwise than by Optionee's will or by the laws of descent and distribution. During the lifetime of Optionee, the Option shall be exercisable only by Optionee or his authorized legal representative. Any heir or legatee of Optionee shall take rights herein granted subject to the terms and conditions hereof. No such trans-fer of this Option Agreement to heirs or legatees of Optionee shall be effec-tive to bind the Company unless the Company shall have been furnished with written notice thereof and a copy of such evidence as the Administrator may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions here-of.

Section 8. No Rights as Shareholder. Optionee shall have no rights as a shareholder with respect to any shares of Common Stock covered by this Option Agreement until the Option is exercised by written notice and accompanied by payment as provided in Section 4 of this Option Agreement.

Section 9. Adjustments. The shares of Common Stock subject to the Option may be adjusted or terminated in any manner as contemplated by Section 10 of the Plan.

Section 10. Change in Control. In the event of a Change in Control, the provisions of Section 13 of the Plan shall apply.

Section 11. Restrictive Covenants. By accepting this Option, Optionee acknowledges that Optionee will be subject to the restrictive covenants set forth on Exhibit A, attached hereto.

Section 12. Shareholders' Agreement. Optionee acknowledges that, in connection with the grant, vesting and/or exercise of this Option, the Administrator may require Optionee to execute and become a party to the Shareholders' Agreement as a condition of such grant, vesting and/or exercise.

Section 13. Compliance With Securities Laws. Upon the acquisition of any shares pursuant to the exercise of the Option herein granted, Optionee (or any person acting under Section 6) will enter into such written representations, warranties and agreements as the Company may reasonably request in order to comply with applicable securities laws or with this Option Agreement.

Section 14. Compliance With Laws. Notwithstanding any of the other provisions here-of, Optionee agrees that he or she will not exercise the Option granted hereby, and that the Company will not be obligated to issue any shares pursuant to this Option Agreement, if the exercise of the Option or the issuance of such shares of Common Stock would constitute a violation by Optionee or by the Company of any provision of any law or regulation of any governmental authority. The parties agree to work together in good faith to resolve any potential violation referenced in this Section 14.

Section 15. Withholding of Tax. To the extent that the exercise of this Option or the disposition of shares of Common Stock acquired by exercise of this Option results in an amount paid to the Optionee which results in income to Optionee for federal or state income tax purposes, Optionee shall pay to the Company at the time of such exercise or disposition such amount of money as the Company may require to meet its obligation under applicable tax laws or regulations and, if Optionee fails to do so, the Company is authorized to withhold from any cash remuneration then or thereafter payable to Optionee, any tax required to be withheld by reason of such resulting compensation income or Company may otherwise refuse to issue or transfer any shares otherwise required to be issued or transferred pursuant to the terms hereof. Payment of the withholding tax by Optionee shall be made in accordance with Section 9(e) of the Plan.

Section 16. No Right to Employment or Other Service. Nothing in the Plan or this Option Agreement shall confer upon Optionee any right to continue to serve the Company in the capacity in effect at the time the Optionee was granted or shall affect the right of the Company to terminate (a) the employment of Optionee with or without notice and with or without Cause or (b) any other service relationship between Optionee and the Company, as the case may be. If there is a dispute as to "Cause", the definitive Cause of any termination of employment or service shall be determined by a mutually agreed upon third-party arbiter or a final decision entered in a court of competent jurisdiction.

Section 17. Resolution of Disputes. As a condition of the granting of the Option hereby, Optionee and Optionee's heirs, personal representatives and successors agree that any dispute or disagreement which may arise hereunder shall be determined by a mutually agreed upon third-party arbiter or a final decision entered in a court of competent jurisdiction.

Section 18. Legends on Certificate. The certificates representing the shares of Common Stock purchased by exercise of the Option will be stamped or otherwise imprinted with legends in such form as the Company or its counsel may require with respect to any applicable restrictions on sale or transfer and the stock transfer records of the Company will reflect stop-transfer instructions with respect to such shares.

Section 19. Notices. Any notice required to be delivered to the Company under this Agreement shall be in writing and addressed to the CEO of the Company at the Company's principal corporate offices. Any notice required to be delivered to Optionee under this Option Agreement shall be in writing and addressed to Optionee at Optionee's address as shown in the records of the Company. Either party may designate another address in writing (or by such other method approved by the Company) from time to time. The Company shall be under no obligation whatsoever to advise Optionee of the existence, maturity or termination of any of Optionee's rights hereunder and Optionee shall be deemed to have familiarized himself or herself with all matters contained herein and in the Plan which may affect any of Optionee's rights or privileges hereunder.

Section 20. Construction and Interpretation. Whenever the term “Optionee” is used herein under circumstances applicable to any other person or persons to whom this award, in accordance with the provisions of Section 7 hereof, may be transferred, the word “Optionee” shall be deemed to include such person or persons.

Section 21. Agreement Subject to Plan. This Option Agreement is subject to the Plan. The terms and provisions of the Plan (including any subsequent amendments thereto) are hereby incorporated herein by reference thereto. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail. All definitions of words and terms contained in the Plan shall be applicable to this Option Agreement. Notwithstanding anything in this Option Agreement to the contrary, if any subsequent amendment impairs the Optionee’s rights or increases the Optionee’s obligations under his or her Award or creates or increases a Participant’s federal income tax liability with respect to an Award, such amendment shall also be subject to the Participant’s consent.

Section 22. Successors and Assigns. The Company may assign any of its rights under this Option Agreement. This Option Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon Optionee and Optionee’s beneficiaries, executors, administrators and the person(s) to whom the Option may be transferred by will or the laws of descent or distribution.

Section 23. Severability. The invalidity or unenforceability of any provision of the Plan or this Option Agreement shall not affect the validity or enforceability of any other provision of the Plan or this Option Agreement, and each provision of the Plan and this Option Agreement shall be severable and enforceable to the extent permitted by law.

Section 24. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled or terminated by the Company at any time, in its reasonable discretion. The grant of the Option in this Option Agreement does not create any contractual right to receive any Options or other Awards in the future. Future Awards, if any, will be at the sole discretion of the Company. Any amendment, modification, or termination of the Plan shall not constitute a change or impairment of the terms and conditions of Optionee’s employment or other service with the Company. Notwithstanding anything in this Option Agreement to the contrary, if any subsequent amendment, cancellation, or termination of the Plan impairs the Optionee’s rights or increases the Optionee’s obligations under his or her Award or creates or increases a Participant’s federal income tax liability with respect to an Award, such amendment, modification or termination shall also be subject to the Participant’s consent.

Section 25. Amendment. The Committee has the right to amend, alter, suspend, discontinue or cancel the Option, prospectively or retroactively; provided, that, no such amendment shall adversely affect Optionee’s material rights under this Option Agreement without Optionee’s consent.

Section 26. No Impact on Other Benefits. The value of Optionee’s Option is not part of his or her normal or expected compensation for purposes of calculating any severance, retirement, welfare, insurance or similar employee benefit.

Section 27. Counterparts. This Option Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to this Option Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

Section 28. Acceptance. Optionee hereby acknowledges receipt of a copy of the Plan and this Option Agreement. Optionee has read and understands the terms and provisions thereof, and accepts the Option subject to all of the terms and conditions of the Plan and this Option Agreement. Optionee acknowledges that there may be adverse tax consequences upon exercise of the Option or disposition of the underlying shares and that Optionee should consult a tax advisor prior to such exercise or disposition.

EXHIBIT A - APPLICABLE RESTRICTIVE COVENANTS

In consideration for Optionee agreeing to the following restrictions, the Company agrees to provide Optionee with the Stock Units pursuant to this Agreement, as well as one or more of the following: initial or continued employment with the Company; portions of the Company’s confidential, proprietary and trade secret information; the ability to develop relationships with the Company’s potential and existing suppliers, financing sources, customers and employees; and specialized training in, and knowledge of, the business group the Optionee is employed with.

1. At all times during Optionee’s employment with the Company, and for the applicable Protected Period (as defined below) following the termination of Optionee’s employment by the Company for “Cause” (as defined in the Plan), Optionee shall be bound by the Noncompete Obligation (defined below).

2. In the event Optionee voluntarily terminates his/her employment for any reason or where the Company terminates Optionee's employment without Cause, the Company may elect, in its sole and absolute discretion upon notice to Optionee, to require that Optionee be bound by the Noncompete Obligation during the applicable Protected Period and to provide Optionee with continuation of Optionee's salary in accordance with the Company's standard payroll practice during the Protected Period (the "Restrictive Covenant Benefit"). In the event Optionee does not receive a salary from the Company, Optionee shall receive an amount, as determined by the Company in its sole and absolute discretion, based on Optionee's corporate title with the Company or its Affiliates.

The receipt of the Restrictive Covenant Benefit is conditioned upon the execution of a general waiver and release agreement in a form agreeable to the Company that becomes effective and irrevocable no later than 30 days following the Optionee's termination of employment. For the avoidance of doubt, the Optionee has no legally binding right to the Restrictive Covenant Benefit unless and until the Company elects, in its sole and absolute discretion, to require that Optionee be bound by the Noncompete Obligation.

3. In the event that Optionee voluntarily terminates employment with the Company or the Company terminates Optionee's employment without Cause, and the Company does not elect to provide the Restrictive Covenant Benefit to Optionee under Paragraph (2) above, Optionee shall not be bound by the Noncompete Obligation. If Optionee voluntarily terminates employment with the Company or the Company terminates Optionee's employment without Cause and the Company elects to provide the Restrictive Covenant Benefit for a period of less than the Protected Period, Optionee shall be bound by the Noncompete Obligation only for the period that the Company is paying, or that the Optionee is receiving, the Restrictive Covenant Benefit.

4. The Company may elect, in its sole and absolute discretion, to provide notice to Optionee prior to a termination without Cause (instead of offering the Restrictive Covenant Benefit under Paragraph (2) above), the amount of said notice to be equal to the otherwise applicable Protected Period. During this notice period, Optionee will remain an employee of the Company and will assist in transitioning the business relationships with customers and other business contacts with which Optionee has had material involvement as requested by the Company and as needed to help the Company retain such business relationships. However, Optionee acknowledges and agrees that the Company can remove Optionee from active service during this notice period at its discretion but that doing so will not eliminate Optionee's duty to remain loyal to the Company while on the Company's payroll and to otherwise comply with the restrictions in this Agreement. The Company reserves the right at its sole and absolute discretion to require Optionee not to carry out Optionee's duties or to carry out limited duties for the Company prior to the termination date. During the notice period, the Company shall be under no obligation to provide any work to, or vest any powers in, Optionee and Optionee shall have no right to perform any services for the Company. During the notice period, the Company shall be entitled at its sole and absolute discretion: (i) to require Optionee not to attend Optionee's place of work or any other premises of the Company; and (ii) to require Optionee to work from Optionee's home. During the notice period, Optionee shall continue to receive Optionee's salary and all contractual benefits in the usual way and shall remain an employee of the Company with all associated duties under the common law.

5. Optionee further agrees that for one (1) year following the termination of Optionee's employment by either Optionee or the Company for any reason or no reason, Optionee will not, without the prior written consent of the Company, directly or indirectly (i) solicit, encourage, or induce any employee of the Company to terminate his or her employment with the Company; or (ii) hire or employ any person who is or was an employee or consultant of the Company.

6. Optionee further agrees that for the Protected Period and thirty (30) days thereafter, upon the termination of Optionee's employment by either Optionee or the Company for any reason or no reason, Optionee will not, without the prior written consent of the Company, directly or indirectly: (i) solicit any customer, supplier or vendor of the Company with which or with whom Optionee was involved as part of Optionee's job responsibilities during Optionee's employment with the Company (other than any such customer with which or with whom Optionee conducted business prior to commencement of his/her employment with the Company) or regarding which or whom Optionee learned Confidential Information during Optionee's employment with the Company to obtain a Conflicting Product or Service from a Competing Business; or (ii) encourage or induce any customer, supplier or vendor of the Company not to do business with the Company or to reduce the amount of business it is doing or might do in the future with the Company or its affiliated entities. Optionee and the Company agree this restriction is inherently reasonable because it is limited to the places or locations where the customer is doing business at the time.

7. Optionee further acknowledges and agrees that the protective covenants herein are material and important terms of this Agreement, and Optionee further agrees that should all or any part or application of Paragraphs (1), (2), (4), (5) or (6) of this Exhibit A be held or found invalid or unenforceable for any reason whatsoever by a court or arbitrator of competent jurisdiction in an action between Optionee and the Company (despite, and after application of, any applicable rights to reformation that could add or renew enforceability), or if the Optionee breaches the obligations of this Exhibit A, the Company shall be entitled to receive from Optionee a return of the Stock Options and Restrictive Covenant Benefit (if applicable) and the Optionee shall forfeit any remaining portion of the Restrictive Covenant Benefit that has not been paid or distributed to the Optionee. If Optionee has sold, transferred, or otherwise disposed of the Stock Options, the Company shall be entitled to receive from Optionee the profits (if any) derived by Optionee by virtue of such sale, transfer, or other disposition.

8. Optionee agrees not to engage in any unauthorized use or disclosure of the Company's Confidential Information, customer relationships, or specialized training. Optionee agrees to use the Company's Confidential Information and other benefits of Optionee's employment to further the business interests of the Company. Optionee agrees to preserve records on current and prospective Company customers, suppliers, and other business relationships that Optionee develops or helps to develop, and not use these records in any way, directly or indirectly, to harm the Company's business. Optionee agrees not to use the Company's Confidential Information or any document or record concerning the business and affairs of the Company ("Company Record") for any purpose without the prior written authorization of an officer of the Company, except that Optionee may use Confidential Information and Company Records to perform Optionee's duties. These restrictions on use or disclosure of Confidential Information will only apply for three (3) years after the end of Optionee's employment where information that does not qualify as a trade secret is concerned; however, the restrictions will continue to apply to trade secret information for as long as the information at issue remains qualified as a trade secret.

9. As used herein, the following terms shall have the meaning ascribed to them:

(a) "Protected Period" shall mean:

- (i) For Officers, Directors and Consultants: six (6) months;
- (ii) For other Employees: four (4) months;

(b) "Noncompete Obligation" means that Optionee will not, directly or indirectly, provide services to a Competing Business that are identical or similar to those Optionee performed for the Company or which serve the same or similar function or purpose or which are otherwise likely to result in the disclosure of Confidential Information.

(c) "Competing Business" means any person or entity engaged in the business of providing a Conflicting Product or Service that is identical or similar to those that Optionee performed for the Company.

(d) "Conflicting Product or Service" means a product and/or service that is the same or similar in function or purpose to a Company product and/or service, such that it would replace or compete with: a product and/or service the Company provides to its customers; or a product or service that is under development or planning by the Company but not yet provided to customers and regarding which Optionee was provided Confidential Information in the course of his/her employment.

(e) "Confidential Information" refers to the Company's trade secrets and any other legally protectable information that is maintained as confidential by the Company and that is not authorized for disclosure to the public.

10. If a court or arbitrator finds a restriction herein to be unenforceable as written, such court or arbitrator (for the jurisdiction covered by that court or the matter before that arbitrator only) will revise the restriction so as to make it enforceable to protect the Company's legitimate business interests. If one or more of the provisions of this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

11. Notwithstanding any provision of the Plan or this Agreement to the contrary, the validity and construction of the provisions of this Exhibit A will be governed by the laws of the State of New York, without regard to the conflicts of law principles thereof. The Optionee expressly agrees that the provisions of the Plan, apply with full force and effect to this Exhibit A.

**Summary of Unwritten Compensation Arrangements
Applicable to Non-Employee Directors of Overstock.com, Inc.**

During 2019 the Company expects to pay its non-employee directors other than the Chairwoman of the Board \$75,000 annually at the rate of \$18,750 per quarter, and expects to pay the Chairwoman of the Board \$150,000 annually at the rate of \$37,500 per quarter. The Company also expect to continue to grant restricted stock units to its non-employee directors, generally at the first Board meeting after a non-employee director first joins the Board, and typically annually thereafter, but subject to the total compensation limitations established in the Company's 2005 Equity Incentive plan, as amended from time to time. The Company also reimburses non-employee directors for out-of-pocket expenses incurred in connection with attending Board and committee meetings. Haverford Valley, L.C., an affiliate of the Company, and certain affiliated entities which make travel arrangements for the Company's executives, also occasionally make travel arrangements for non-employee directors to attend Board meetings.

AMENDMENT NO. 1 TO CAPITAL ON DEMAND™ SALES AGREEMENT

March 15, 2019

JonesTrading Institutional Services LLC
 757 Third Avenue, 23rd Floor
 New York, NY 10017

Ladies and Gentlemen:

Overstock.com, Inc. (the "Company") and JonesTrading Institutional Services LLC (the "Agent") are parties to that certain Capital on Demand™ Sales Agreement dated August 9, 2018 (the "Original Agreement"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. Section 1 of the Original Agreement is hereby amended to replace:

"Except where the context otherwise requires, such registration statement, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, and any post-effective amendment of the registration statement, is herein called the "Registration Statement."

With,

"Except where the context otherwise requires, such registration statement, and any post effective amendment thereto, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, or any subsequent registration statement on Form, S-3 filed pursuant to Rule 415(a)(6) under the Securities Act by the Company to cover any Placement Shares, is herein called the "Registration Statement."

2. All references to "August 9, 2018" set forth in Schedule 1 and Exhibit 7(m) of the Original Agreement are revised to read "August 9, 2018 (as amended by Amendment No. 1 to Capital on Demand™ Sales Agreement, dated March 15, 2019)".

3. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.

4. Entire Agreement; Amendment; Severability. This Amendment No. 1 to the Original Agreement together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Placement Notices issued pursuant hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. All references in the Original Agreement to the "Agreement" shall mean the Original Agreement as amended by this Amendment No. 1; *provided, however*, that all references to "date of this Agreement" in the Original Agreement shall continue to refer to the date of the Original Agreement.

5. Applicable Law: Consent to Jurisdiction. This amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this amendment and agrees that such service shall

constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

6. Waiver of Jury Trial. The Company and the Agent each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this amendment or any transaction contemplated hereby.

7. Counterparts. This amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed amendment by one party to the other may be made by facsimile transmission.

If the foregoing correctly sets forth the understanding among the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement between the Company and the Agent.

Very truly yours,

OVERSTOCK.COM, INC.

By: /s/ E. Glen Nickle
Name: E. Glen Nickle
Title: Vice President, Legal, General Counsel and Secretary

JONESTRADING INSTITUTIONAL SERVICES LLC

By: /s/ Burke Cook
Name: Burke Cook
Title: General Counsel

tZERO GROUP, INC.
OMNIBUS AMENDMENT TO OPTION GRANT AGREEMENTS

November 25, 2019

THIS OMNIBUS AMENDMENT TO OPTION GRANT AGREEMENTS (the “Amendment”) is made by and between tZERO Group, Inc., a Delaware corporation (the “Company”), and certain “Participants” to the Company’s 2017 Equity Incentive Stock Plan (adopted on December 24, 2017 and as amended, supplemented or otherwise modified prior to the date hereof, the “Plan”), as of the date set forth above. Any capitalized terms not otherwise defined in this Agreement shall have the definitions set forth in the Plan.

WHEREAS, the Company has adopted the Plan, pursuant to which Awards of Options may be granted from time to time;

WHEREAS, certain Participants were previously granted Awards of Options pursuant to a Nonqualified Option Grant Agreement (such agreement as amended, supplemented or otherwise modified prior to the date hereof, the “Existing Agreement”) and accompanying Notice of Stock Option Grant and either maintain vested Options or the ability to vest Options in the future pursuant to such Existing Agreement as of the date hereof, including those Participants listed on Annex A (such Participants, “Affected Participants”);

WHEREAS, the Company has determined that it is in the best interests of the Company and its Stockholders to amend each Existing Agreement to allow each Affected Participant to exercise any vested Options they may receive from the period following the termination of their Continuous Service until the Expiration Date set forth in such Affected Participant’s Existing Agreement (the “Exercise Amendments”), as provided for herein; and

WHEREAS, the Amendment does not require any Affected Participant’s consent pursuant to the terms of the Plan.

NOW, THEREFORE, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Amendment to Existing Agreement.

- a. Section 5 of each Existing Agreement (or equivalent section relating to the termination of an Affected Participant’s Continuous Service) is hereby amended and restated in its entirety to read as follows:

“Section 5. Termination of Continuous Service. In the event Optionee’s Continuous Service terminates, Optionee may exercise the Option (to the extent that Optionee was entitled to exercise the Option as of the date of termination) at any time prior to the Expiration Date set forth in the Grant Notice. If, after termination, Optionee does not exercise the Option before the Expiration Date set forth in the Grant Notice, the Option shall terminate.”

- b. To the extent any Existing Agreement does not follow or was not prepared utilizing the Company’s standard form of Nonqualified Option Grant Agreement (as existing on the date hereof), such Existing Agreement shall be deemed to be amended as may be necessary to effectuate the Exercise Amendments; provided that in no event shall any Existing Agreement be amended or otherwise modified pursuant to this Amendment in any manner which would result in such modification having an adverse effect on such Affected Participant’s material rights under the applicable Existing Agreement.

2. Miscellaneous.

(a) Entire Agreement. The applicable Existing Agreements, this Amendment and the Plan contain the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein and supersede all prior communications, representations and negotiations in respect thereto. In the event that any terms or provisions of an Existing Agreement or the Plan conflict or are inconsistent with the terms and provisions of this Amendment, the terms of this Amendment shall govern and control. Except as amended hereby, the Existing Agreements remain unmodified and in full force and effect.

(b) Effectiveness. This Amendment shall be deemed effective as of October 10, 2019, as if executed on such date.

(c) Severability. The invalidity or unenforceability of any provision of this Amendment, an Existing Agreement or the Plan shall not affect the validity or enforceability of any other provision of this Amendment, an Existing Agreement or the Plan, and each provision of this Amendment, an Existing Agreement and the Plan shall be severable and enforceable to the extent permitted by law.

(d) Governing Law. This Amendment shall be governed by and construed and enforced in accordance with the laws of the State of New York without regard to the provisions governing conflict of laws.

IN WITNESS WHEREOF, the undersigned, an authorized officer of the Company, has caused this Amendment to be executed as of the date first stated above.

tZERO GROUP, INC.

By:	/s/ Steven Hopkins
Name:	Steven Hopkins
Title:	President

Subsidiaries of the Registrant

Name	Jurisdiction of Formation	Trade Names
Overstock.com Services, Inc.	Utah	Overstock.com Services
Supplier Oasis Fulfillment Services, Inc.	Utah	SOFS
Overstock Ireland Limited	Ireland	O.co Ireland.ie
O Agency Group, Inc.	Utah	Overstock.com Insurance
O.com Land, LLC	Utah	
O.com Ventures, Inc.	Utah	
tZERO Group, Inc. (fka TØ.com, Inc. & fka Medici, Inc.)	Delaware	
tZERO Technologies, LLC (fka Cirrus Services, LLC)	Delaware	
SpeedRoute, LLC	Delaware	
DeSoto, Inc.	Delaware	
Overstock.com Cars, Inc.	Utah	
O.com Gift Cards, Inc.	Utah	
Medici Ventures, Inc.	Delaware	
O.co HK Limited (HK)	Hong Kong	
Medici Land Governance, Inc.	Delaware	
Medici Land Governance, Ltd.	Zambia	
O Real Estate, Inc.	Utah	
Mac Warehouse, LLC	Utah	
Mac Warehouse Retail, LLC	Utah	
SiteHelix, Inc.	Delaware	
Blue Ocean Technologies, LLC	New York	
Verify Investor, LLC	California	
Avatar, LLC	Utah	
Bitsy Crypto UK Limited	England and Wales	
tZERO Crypto, Inc. (fka Bitsy, Inc.)	Utah	
tZERO IP, LLC	Delaware	
tZERO Broker Services, LLC	Delaware	
tZERO ATS, LLC	Delaware	
tZERO Markets, LLC	Delaware	

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Overstock.com, Inc.:

We consent to the incorporation by reference in the registration statements (Nos. 333-181422, 333-184344, 333-162674, 333-160512, 333-124441, 333-123540, 333-203175, and 333-203176) on Form S-8 and (Nos. 333-207141, 333-226729 and 333-233913) on Form S-3 of Overstock.com, Inc. of our reports dated March 13, 2020, with respect to the consolidated balance sheets of Overstock.com, Inc. as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes and financial statement schedule II (collectively, the consolidated financial statements), and the effectiveness of internal control over financial reporting as of December 31, 2019, which reports appear in the December 31, 2019 annual report on Form 10-K of Overstock.com, Inc.

Our report dated March 13, 2020, on the consolidated financial statements refers to a change in the method of accounting for leases as of January 1, 2019 due to the adoption of Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) No. 2016-02, *Leases (Topic 842)*, and related amendments.

Our report dated March 13, 2020 on the consolidated financial statements refers to a change in the method of accounting for revenue from contracts with customers as of January 1, 2018 due to the adoption of FASB ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*.

/s/ KPMG LLP
Salt Lake City, Utah
March 13, 2020

CERTIFICATION

I, Jonathan E. Johnson III, certify that:

1. I have reviewed this Annual Report on Form 10-K of Overstock.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: 3/13/2020

/s/ JONATHAN E. JOHNSON III

Jonathan E. Johnson III

Chief Executive Officer

(principal executive officer)

CERTIFICATION

I, Anthony D. Strong, certify that:

1. I have reviewed this Annual Report on Form 10-K of Overstock.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: 3/13/2020

/s/ ANTHONY D. STRONG

Anthony D. Strong

Acting Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Jonathan E. Johnson III, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Overstock.com, Inc. on Form 10-K for the year ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: 3/13/2020

/s/ JONATHAN E. JOHNSON III

Jonathan E. Johnson III

Chief Executive Officer

(principal executive officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Anthony D. Strong, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Overstock.com, Inc. on Form 10-K for the year ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: 3/13/2020

/s/ ANTHONY D. STRONG

Anthony D. Strong

Acting Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)