



Overstock.com Calls SEC's Decision to Post Fails-to-Deliver Data 'A Commendable Step'

January 18, 2008

Repeats Calls for SEC to Continue Improving Regulation SHO

SALT LAKE CITY, Jan. 18 (PRNewswire-FirstCall) – Overstock.com, Inc. (Nasdaq: OSTK) learned today that the Securities & Exchange Commission has begun posting certain fails-to-deliver data on the SEC website (see <http://www.sec.gov/foia/docs/failsdata.htm>). Many market participants, including Overstock.com, have called for this development, and Overstock.com applauds the SEC for this initiative.

One disappointing aspect of the SEC action is that the SEC website only shows fails-to-deliver data from August and September 2007 and the SEC notes that more current "data for a quarter will be available [to] at least two months after the last settlement date of the quarter."

"Overstock.com has long been an advocate of prompt public disclosure of aggregate failure-to-deliver positions for every Regulation SHO threshold list company," said Jonathan Johnson, Overstock.com senior vice president of corporate affairs and legal. "This is a good start, but we'd like to see the data disclosed promptly – at least as promptly as twice a month, which is how often the exchanges now report short interest data. Transparency and disclosure aren't really meaningful unless they are timely."

The SEC initiative addresses one of the four component reforms that comprise the "D.C.L.D." standard that Overstock.com has continually urged the SEC to adopt in order to stop chronic fails-to-deliver. The "D.C.L.D." standard acronym stands for: "D" eliminate Regulation SHO's "transferor clause," "C" eliminate Regulation SHO's "primary market maker exception," "L" require short-sellers to "locate and pre-borrow shares before selling them" and "D" require the exchanges to "disclose fully and promptly the aggregate failure-to-deliver positions for every threshold list company. While the SEC has eliminated the grandfather clause and now provides some level of delayed disclosures ("Q" and "D" above), it has yet to eliminate the options market maker exception or require short-sellers to locate or pre-borrow shares before selling them – despite numerous, forceful calls from the U.S. Chamber of Commerce, other business groups, members of Congress, investors, academics, and other public companies.

Another disappointing aspect of the initiative is that the SEC notes that it "cannot guarantee the accuracy of the data."

Overstock.com chairman and chief executive officer Patrick M. Byrne commented "I commend the SEC for standing up to what I am given to understand is enormous behind-the-scenes pressure being brought on them by Wall Street. However, the numbers reported on the SEC website do not include fails cloaked by pre-netting, nor those cloaked by the Stock Borrow Program, nor those cloaked through shifts into the ex-clearing system (which the DTCC itself has described as being 45% of the problem). Nor is it clear whether this data includes fails-to-locate, or failures originating from overseas (and I doubt it does). Thus, I commend the SEC on its decision to offend Wall Street by providing data on 1% of the problem (where X = 5 to 15, depending upon whom one believes). It is a great first step."

Regulation SHO requires the stock exchanges to publish daily a list of companies whose stock has failures-to-deliver above a certain threshold. It also requires mandatory close-outs for open fail-to-deliver positions in threshold securities persisting for over 13 days, with the aim that no security would appear on the threshold list for an extended period. Despite this, Overstock.com appeared on the list for 669 consecutive trading days, and as of January 17, 2008, Overstock.com has appeared on the list for a total of 724 trading days – nearly the entire time the list has existed. 374 companies are currently on the Regulation SHO threshold list, with 164 appearing for over 13 consecutive trading days, 31 for over 100 consecutive trading days, and one, Medis Technologies Ltd., for 616 consecutive trading days. (Source: http://byjyns.net/stock/short_list.php?tsid=0080117).

About Overstock.com

Overstock.com, Inc. is an online "treasure" retailer offering discount, brand-name merchandise for sale over the Internet. The company offers its customers an opportunity to shop for bargains conveniently, while offering its suppliers an alternative inventory liquidation distribution channel. Overstock.com, headquartered in Salt Lake City, is a publicly traded company listed on the NASDAQ Global Market System and can be found online at <http://www.overstock.com>.

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This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements include, but are not limited to, statements regarding what the company believes will solve the fail-to-deliver problem. Our Form 10-K for the year ended December 31, 2006, our subsequent quarterly reports on Form 10-Q, and our other subsequent filings with the Securities and Exchange Commission identify important factors that could cause our actual results to differ materially from those contained in our projections, estimates or forward-looking statements.

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