

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934**

**February 18, 2005**

Date of Report (date of earliest event reported)

**Overstock.com, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**000-49799**  
(Commission  
File Number)

**87-0634302**  
(I.R.S. Employer  
Identification Number)

**6322 South 3000 East, Suite 100**  
**Salt Lake City, Utah 84121**  
(Address of principal executive offices)

**(801) 947-3100**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 Entry into a Material Definitive Agreement**

On February 18, 2005, in connection with its previously announced \$50,000,000 share repurchase program, Overstock.com, Inc. (the "Company") entered into a generally non-binding term sheet with Lehman Brothers OTC Derivatives Inc. ("Lehman Brothers OTC"). The term sheet contemplates a series of structured stock repurchase transactions between the Company and Lehman Brothers OTC that will allow the Company to determine, in advance, the prices at which it may repurchase up to 1,000,000 shares of its common stock in transactions to be effected by Lehman Brothers OTC from time to time. Although the term sheet does not require the Company to enter into any of the contemplated transactions, it does require the Company to indemnify Lehman Brothers OTC against losses, claims, damages, liabilities and expenses Lehman Brothers OTC incurs under certain circumstances if the Company (i) does not enter into the transactions contemplated by the term sheet, including the cost to Lehman Brothers OTC of unwinding any hedging transactions Lehman Brothers OTC may enter into in preparation for the execution of the transactions contemplated by the term sheet, or (ii) fails to execute definitive documentation relating to the transactions. The obligations of Lehman Brothers OTC are guaranteed by Lehman Brothers Holdings Inc.

On February 18, 2005 and February 22, 2005 the Company entered into several structured stock repurchase transactions with Lehman Brothers OTC as contemplated by the term sheet and by discussions between the Company and Lehman Brothers OTC, pursuant to which the Company may be required to purchase up to a maximum of 750,000 shares of its common stock at certain settlement dates. In connection with these repurchase transactions, the Company has provided approximately \$30.8 million to Lehman Brothers OTC. Upon settlement, we will either have our capital investment returned with a premium or receive shares of our common stock, depending on whether the market price of our common stock is above or below a pre-determined price agreed in connection with each such transaction.

To the extent that Lehman Brothers OTC delivers shares of common stock to the Company as a result of the transactions described above, the aggregate amount the Company pays or paid to Lehman Brothers OTC for the repurchase of the shares as a result of these transactions will reduce the amount the Company might otherwise have spent to directly repurchase shares from time to time under its stock repurchase program.

The Company has previously entered into unrelated agreements with Lehman Brothers Inc. in connection with debt and equity financings.

## **Item 9.01 Financial Statements and Exhibits**

(c) Exhibits.

Exhibit 99.1 Term sheet executed February 18, 2005 with Lehman Brothers OTC Derivatives Inc.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

OVERSTOCK.COM, INC.

By: /s/ DAVID K. CHIDESTER

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David K. Chidester  
Vice President, Finance

Date: February 24, 2005

## QuickLinks

[Item 1.01 Entry into a Material Definitive Agreement](#)

[Item 9.01 Financial Statements and Exhibits](#)

[SIGNATURE](#)

212-526-3699

Lehman Brothers  
Equity Derivatives

**Call Spread Transaction**

*Summary of Indicative Terms as of 02/18/05*

<i>Seller:</i>	Lehman Brothers OTC Derivatives Inc. (Guaranteed by Lehman Brothers Holdings Inc.)
<i>Buyer:</i>	Overstock.com, Inc. ("Client")
<i>Agent:</i>	Lehman Brothers Inc. ("LBI") is acting as agent on behalf of Lehman Brothers OTC Derivatives Inc. ("LOT") and the Client for this Transaction. LBI has no obligations, by guarantee, endorsement or otherwise, with respect to the performance of this Transaction by LOTC.
<i>Trade Dates:</i>	Each date on or after <b>TBD</b> on which the Buyer notifies the Seller that it desires to execute a portion of the Transaction (a "Tranche"), such notice (a "Notice") to contain (i) the Number of Lower Call Options and the Number of Upper Call Options subject to such Tranche (in each case which shall be a multiple of 100,000), and (ii) the Expiration Date of such Tranche.
<i>Selected Security:</i>	Class A Common stock of Overstock.com, Inc. (Bloomberg Ticker: " <b>OSTK</b> ")
<i>Exercise Style:</i>	European
<i>Expiration Date:</i>	For each Tranche as provided by the Buyer in the applicable Notice
<i>Number of Lower Call Options:</i>	For each Tranche, as provided by the Buyer in the applicable Notice; <i>provided that</i> the total Number of Lower Call Options subject to all Tranches shall not exceed 1,000,000; <i>and provided further that</i> , the Number of Lower Call Options shall equal the Number of Upper Call Options.
<i>Number of Upper Call Options:</i>	For each Tranche, as provided by the Buyer in the applicable Notice; <i>provided that</i> the total Number of Upper Call Options subject to all Tranches shall not exceed 1,000,000.
<i>Lower Strike Price:</i>	For each Tranche, 0.00% of the price of the Selected Security at which the Tranche is established on the applicable Trade Date.
<i>Upper Strike Price:</i>	For each Tranche, a percentage of the price of the Selected Security at which the Tranche is established on the applicable Trade Date as provided by the Buyer to the Seller.
<i>Premium:</i>	For each Tranche, (i) a percentage of the price of the Selected Security at which the Tranche is established on the applicable Trade Date as <i>multiplied by</i> (ii) the Number of Lower Call Options subject to such Tranche as provided by the Buyer to the Seller
<i>Premium Payment Date:</i>	For each Tranche, Two Exchange Business Days after the applicable Trade Date
<i>Settlement Date:</i>	For each Tranche, Three Exchange Business Days after the applicable Expiration Date

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*Settlement Type:*

For each Tranche, Cash, Physical, or Net Share Settlement at the Buyer's discretion, with written notice of settlement election required at least two Exchange Business Days prior to the applicable Expiration Date. If no notice is given, Physical Settlement shall apply to such Tranche.

*Option Payout:*

**For each Tranche, if Cash Settlement is applicable:**

If the Closing Price of the Selected Security on the Expiration Date ("Settlement Price") is **greater than** the Lower Strike Price and **less than** the Upper Strike Price, the Seller will pay the Buyer (the difference between the Settlement Price and the Lower Strike Price) multiplied by the Number of Lower Call Options.

If the Closing Price of the Selected Security on the Expiration Date ("Settlement Price") is **greater than or equal to** the Upper Strike Price, the Seller will pay the Buyer the difference between ((the Settlement Price less the Lower Strike Price) multiplied by the Number of Lower Call Options) and ((the Settlement Price less the Upper Strike Price) multiplied by the Number of Upper Call Options).

**For each Tranche, if Physical Settlement is applicable:**

If the Closing Price of the Selected Security on the Expiration Date ("Settlement Price") is **greater than** the Lower Strike Price and **less than** the Upper Strike Price, the Seller will deliver to the Buyer a number of Selected Securities equal to the Number of Upper Call Options

If the Closing Price of the Selected Security on the Expiration Date ("Settlement Price") is **greater than or equal to** the Upper Strike Price, on the relevant Settlement Date the Seller will pay the Buyer the Upper Strike Price multiplied by the Number of Upper Call Options

**For each Tranche, if Net Share Settlement is applicable:**

If the Closing Price of the Selected Security on the Expiration Date ("Settlement Price") is **greater than** the Lower Strike Price and **less than** the Upper Strike Price, on the relevant Settlement Date the Seller will deliver to the Buyer a number of Selected Securities equal to ((the difference between the Settlement Price and the Lower Strike Price) divided by the Settlement Price) multiplied by (the Number of Lower Call Options).

If the Closing Price of the Selected Security on the Expiration Date ("Settlement Price") is **greater than or equal to** the Upper Strike Price, on the relevant Settlement Date the Seller will deliver to the Buyer a number of Selected Securities equal to the difference between ((the Settlement Price less the Lower Strike Price) multiplied by the Number of Lower Call Options) and ((the Settlement Price less the Upper Strike Price) multiplied by the Number of Upper Call Options), divided by the Settlement Price

*Dividends:* For each Tranche, if, at any time during the period from but including three Exchange Business Days from the Trade Date to but excluding three Exchange Business Days after the Expiration Date (the "Trade Period"), a record date occurs with respect to a dividend on the Selected Security, then the Dividend Amount for such record date shall equal the Seller's Hedging Shares, determined as of the Exchange Business Day immediately prior to the date that the Selected Security has commenced trading ex-dividend, multiplied by the declared gross cash dividend amount

*Payment of Dividend Amount:* The Seller shall pay the Buyer the Dividend Amount on the record date.

*Additional Provisions:* The Calculation Agent may terminate or adjust this Transaction if a Nationalization, Insolvency, Merger or Tender Event (10% threshold) occurs with respect to the Selected Security.

The Buyer's entry into the Transaction complies with and is not in any way limited by any contractual, legal, regulatory or other restrictions to which the Buyer may be subject.

The Buyer represents that each of its required filings under all applicable securities laws have been filed, it is not entering into this transaction while in possession of any material non-public information, and it is not limited (by law, contract or policy) from effecting any of the settlement types hereunder.

Notwithstanding anything in the Master Agreement to the contrary, Second Method and Loss shall apply.

*Calculation Agent:* Lehman Brothers Inc.

*Documentation:* Signed Term Sheet, Transaction Confirmation, and an executed ISDA Master Agreement

*Additional Acknowledgement:* The Buyer acknowledges and agrees that the terms set forth herein are indicative and are subject to market conditions as of the date hereof. If due to market conditions at the time of actual hedge execution, the Seller's entire hedge cannot be achieved consistent with the indicative terms herein, then the Buyer acknowledges and agrees that the final terms (i) will vary from those set out herein and (ii) may include an additional payment obligation of the Buyer to reflect any increased costs to the Seller.

By signing below, Client acknowledges and agrees that, notwithstanding the indicative nature of the other provisions of this term sheet, LOTC may engage in hedging activities with respect to the proposed transaction described herein and otherwise prepare for the execution of such transaction, in each case as LOTC determines appropriate. Client agrees to provide LOTC the following indemnity in order to induce LOTC to continue to consider such transaction. If Client does not enter into the proposed transaction described herein with respect to the maximum "Number of Lower Call Options" and "Number of Upper Call Options" above (or such lesser number as LOTC determines), or does not execute, promptly after the Trade Date, the definitive documentation described under "Documentation" above, Client agrees to indemnify LOTC for any and all losses, claims, damages, liabilities and expenses incurred by LOTC in good faith and arising out of or relating to the proposed transaction, which may include the cost to LOTC of unwinding any related hedging transactions. This provision shall be governed by and construed in accordance with the internal laws of the State of New York. The parties acknowledge and agree that, other than this provision, this term sheet is indicative only and not binding

on the parties. Capitalized terms used herein and not otherwise defined herein shall have the meanings provided to them in the 2000 ISDA Definitions and the 2002 ISDA Equity Definitions (as applicable) in each case as published by the International Swaps and Derivatives Association, Inc.

**Accepted and Agreed:**

LEHMAN BROTHERS OTC DERIVATIVES INC.,  
By its agent, Lehman Brothers Inc.

OVERSTOCK.COM, INC.

By: /s/ SCOTT E. WILLOUGHBY

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Name: Scott E. Willoughby  
Title: Senior Vice President

By: /s/ DAVID K. CHIDESTER

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Name: David K. Chidester  
Title: Vice President, Finance

By: /s/ JONATHAN E. JOHNSON III

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Name: Jonathan E. Johnson III  
Title: Vice President, Legal and Corporate Affairs

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All term sheets are indicative only. Actual terms are subject to confirmation by Lehman Brothers OTC Derivatives Inc. Clients are advised to make an independent review and reach their own conclusions regarding the legal, credit, tax and accounting aspects of this transaction relating to their assets, liabilities, or other risk management objectives and risk tolerance. Although the indicative information set forth is reflective of the terms, as of the specified date under which Lehman Brothers believes a transaction might be structured, no assurance can be given that such a transaction could, in fact, be executed at the specific levels indicated.



## QuickLinks

[Call Spread Transaction Summary of Indicative Terms as of 02/18/05](#)