

## **CHARTER FOR THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS**

### **PURPOSE:**

The purpose of the Audit Committee of the Board of Directors of Overstock.com, Inc. (the “*Company*”) shall be to oversee the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. The Audit Committee will undertake those specific duties and responsibilities listed below and such other duties as the Board of Directors may from time to time prescribe.

### **MEMBERSHIP:**

The Audit Committee members will be appointed by, and will serve at the discretion of, the Board of Directors, and will consist of at least three members of the Board of Directors. Each member shall meet the independence and experience requirements of the Nasdaq Stock Market, Section 10A(m)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules and regulations of the Securities and Exchange Commission, and each member shall be able to read and understand fundamental financial statements, including a balance sheet, income statement and cash flow statement, in accordance with applicable Nasdaq listing standards. In addition, at least one member of the Audit Committee shall have past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background that results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities. A director who qualifies as an “audit committee financial expert” under the rules of the Securities and Exchange Commission shall be presumed to qualify as a financially sophisticated audit committee member. No member of the Audit Committee shall have participated in the preparation of the financial statements of the Company or any subsidiary at any time during the past three years.

### **RESPONSIBILITIES:**

The independent auditors shall report directly to the Audit Committee. The responsibilities of the Audit Committee shall include:

- Being directly responsible for the appointment, compensation, retention and dismissal of the independent auditors, and oversight of the work of the independent auditors, including being responsible for resolving any disagreements between management and the independent auditors regarding financial reporting;
- Obtaining and reviewing a report from the independent auditor at least annually regarding (a) the independent auditor's internal quality-control procedures, (b) any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting one or more independent audits carried out by the firm and (c) any steps taken to deal with any such issue;
- Evaluating the qualifications, performance and independence of the independent

auditor, including considering whether the auditor's quality controls are adequate and the provision of permitted non-audit services is compatible with maintaining the auditor's independence, and taking into account the opinions of management and internal auditors, and presenting the Committee's conclusions to the Board;

- Reviewing the independent auditors' proposed audit scope, approach and independence, and approving all audit engagement fees and terms;
- Providing oversight and monitoring with respect to the Company's financial reporting process, internal controls and the design and operation of the Company's disclosure controls and procedures;
- Reviewing and discussing with management and the independent auditor any major issues regarding the adequacy of the Company's internal controls, any special steps adopted in light of any material control deficiencies, and the adequacy of disclosures about changes in internal control over financial reporting;
- Reviewing and discussing with management (including the senior internal audit executive) and the independent auditor the Company's assessment of internal control over financial reporting and the independent auditor's report on the Company's assessment of internal control over financial reporting prior to the filing of the Company's Form 10-K;
- Approving or preapproving all auditing services, internal control-related services, and permitted non-audit services to be provided to the Company by the independent auditors in accordance with Section 10A(i) of the Exchange Act; provided that the Audit Committee may delegate authority to subcommittees consisting of one or more members when appropriate, including authority to grant pre-approvals of audit and permitted non-audit services, provided that the decisions of such subcommittee to grant pre-approvals shall be presented to the Audit Committee at its next scheduled meeting;
- Ensuring the regular rotation of the lead or coordinating audit partner, and of the audit partner responsible for reviewing the audit, as required by Section 10A(j) of the Exchange Act;
- Ensuring its receipt, at least annually, obtaining and reviewing the letter and written disclosures from the independent auditor required by the PCAOB regarding the independent auditor's communications with the Audit Committee concerning independence, including a formal written statement by the independent auditor delineating all relationships between the auditor and the Company, and actively engaging in a dialog with the independent auditor with respect to the independent auditor's independence and any disclosed relationships or services that may impact the objectivity and independence of the independent auditor, and taking appropriate action to oversee the independence of the independent auditors;
- Reviewing and directing the Company's independent auditors to review before filing with the SEC the Company's interim financial statements included in

Quarterly Reports on Form 10-Q, using professional standards and procedures for conducting such reviews;

- Receiving appropriate communications from the Company's independent auditors in conjunction with audits and interim reviews, including any difficulties encountered in the course of the audit work, any restrictions on the scope of activities or access to requested information, and any significant disagreements with management, and discussing with the independent auditors the matters required to be discussed under SAS No. 61, as amended by AU Section 380;
- Reviewing with management and the independent auditors, before release, the audited financial statements and Management's Discussion and Analysis in the Company's Annual Report on Form 10-K, as well as the auditors' judgment about the quality, not just the acceptability, of the Company's accounting principles as applied in its financial reporting, including the selection, application and disclosure of critical accounting policies;
- Obtaining and considering quarterly reports from the independent auditors regarding: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Company, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors; and (3) other material written communications between the independent auditors and Company management, such as any management letter or schedule of unadjusted differences;
- Discussing with the independent auditors the auditors' conclusions regarding the reasonableness of the judgments and estimates made in the preparation of the financial statements that may be viewed as critical, as well as the clarity of the Company's financial statement disclosures;
- Discussing with the independent auditors any material issues on which the Company's audit team consulted the national office of the independent auditors;
- Obtaining from the independent auditors assurance that Section 10A(b) of the Exchange Act has not been implicated so as to require the independent auditors to inform the Audit Committee of any illegal act or to provide a report with respect to any illegal act;
- Obtaining reports from management, the Company's senior internal auditing executive and the independent auditors that the Company and its subsidiary/foreign affiliated entities are in compliance with applicable legal requirements and the Company's Code of Business Conduct and Ethics.
- Discussing with the Company's senior legal officers any legal or regulatory matters that may have a material effect on the financial statements or the Company's compliance policies;

- Reviewing and discussing with management the Company's earnings press releases, including the use of any non-GAAP financial measures, prior to release;
- Discussing with management and the independent auditor the effect of regulatory and accounting initiatives as well as any off-balance sheet structures on the Company's financial statements;
- Discussing with management the Company's major financial, operational, legal and other risk exposures and the steps management has taken to monitor and control such exposures, including the Company's risk assessment and risk management policies;
- Reviewing the appointment and replacement of the Company's senior internal auditing executive;
- Reviewing significant reports to management prepared by the internal auditing department and management's responses;
- Discussing with management and the independent auditors the internal audit department responsibilities, budget and staffing and any recommended changes in the planned scope of the internal audit;
- Reviewing the CEO and CFO certifications under Sections 302 and 906 of the Sarbanes- Oxley Act and the Company's disclosures relating thereto;
- Recommending to the Board whether the financial statements should be included in the Company's Annual Report on Form 10-K;
- Providing a report in the Company's proxy statement in accordance with the requirements of Regulation S-K and Schedule 14A;
- Causing the Company to establish hiring practices for employees or former employees of the independent auditor that are consistent with Section 10A(l) of the Exchange Act;
- Reviewing and approving any transaction that would require disclosure as a related party transaction pursuant to Item 404 of Regulation S-K;
- Establishing procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls and auditing matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters;
- Reviewing with management and the independent auditors any correspondence with regulators and any published reports that raise material issues regarding the Company's accounting policies;
- Reviewing the Audit Committee's own structure, processes and membership

requirements, reviewing and reassessing the adequacy of this Charter on an annual basis, and recommending proposed changes to this Charter to the Board for approval; and

- Performing such other duties as may be requested by the Board of Directors.
- In carrying out its duties, the Audit Committee shall have full authority to conduct investigations into any matter within its scope of authority and to engage, without further Board approval, independent legal, accounting and other advisors as the Audit Committee may deem necessary. The Company shall provide appropriate funding, as determined by the Audit Committee, for the compensation of any such advisors and to pay any ordinary administrative expenses of the Audit Committee that are necessary or appropriate in carrying out its duties.

#### **MEETINGS:**

The Audit Committee will meet at least quarterly. The Audit Committee may establish its own schedule, which it will provide to the Board of Directors in advance.

The Audit Committee will meet in executive session at least twice a year and will meet separately with the independent auditors as well as members of the Company's management as it deems appropriate in order to review the financial controls of the Company.

The Audit Committee will review and assess the adequacy of this charter annually and, if appropriate, recommend changes to the Board.

#### **MINUTES:**

The Audit Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board of Directors.

#### **REPORTS:**

Apart from the report prepared pursuant to Regulation S-K and Item Schedule 14A, the Audit Committee will summarize its examinations and recommendations to the Board from time to time as may be appropriate, consistent with the Committee's charter.

#### **RELIANCE ON INFORMATION:**

In adopting this Audit Committee Charter, the Board of Directors acknowledges that the Audit Committee members are not employees of the Company and are not providing any expert or special assurance as to the Company's financial statements or any professional certification as to the independent auditors' work or auditing standards. Each member of the Audit Committee shall be entitled to rely on the integrity of the persons and organizations within and without the Company that provide information to the Audit Committee and the accuracy and completeness of the financial and other information provided to the Audit Committee by such persons or organizations absent actual knowledge that any such information is inaccurate or incorrect.