



Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121
Phone: (801) 947-3100
Fax: (801) 947-3144

VIA ELECTRONIC SUBMISSION AND OVERNIGHT MAIL

April 19, 2007

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: Comments on Proposed Amendments to Regulation SHO
File No S7-12-06

Dear Secretary Morris:

Overstock.com, Inc., a Delaware corporation with its offices in Utah, is an online "closeout" retailer whose shares are publicly traded on the NASDAQ(GM). We appreciate the opportunity to provide additional comments¹ on the SEC's proposed amendments to Regulation SHO.

Since January 2005, Overstock has been listed on the Regulation SHO threshold list a total of 535 trading days (including, as of today, 500 straight trading days and counting) – longer than any other company.² When the SEC initially proposed Regulation SHO, it stated that "[n]aked short selling can have a number of negative effects on the market, *particularly when the fails to deliver persist for an extended period of time* and result in a significantly large unfulfilled delivery obligation at the clearing agency where trades are settled."³ Moreover, we continue to find it impossible to obtain timely information from the SEC regarding the volume of failures to deliver in Overstock stock.⁴ The seemingly endless persistence of Overstock's name on the

¹ Overstock's previous comment letter of September 11, 2006 is enclosed as Exhibit "A".

² Overstock has been on the Regulation SHO threshold list the entire time the SEC has been considering amendments to Regulation SHO. While a thoughtful and considered approach may have merits, so long as the SEC fails to act we expect that Overstock will continue to be the victim of abusive short selling. Thus, we urge the SEC to *act* quickly.

³ *Proposing Release*, Securities Exchange Act Release No. 34-48709 (October 28, 2003), 68 FR 62972 at 62975 (November 6, 2003) (emphasis added).

⁴ While the SEC responded to our July 6, 2006 Freedom of Information Act (FOIA) request for the volume of the failures in Overstock stock, the response did not come until November 9, 2006 (and then only after we had sent a follow-up request). Consequently, the FOIA data were stale; the most recent failures to deliver data were from May 1, 2006. On December 29, 2006, we submitted to the SEC a follow-up FOIA request for more recent data (enclosed as Exhibit "B" requesting the volumes of failures to deliver in Overstock stock from May 1, 2006 through October 31, 2006). Three months later the SEC has provided only a *partial* response, again with stale data (enclosed as Exhibit "C" which provides the volumes of failures to deliver in Overstock stock from May 1, 2006 through June 30, 2006).

Ms. Nancy M. Morris

Page 2

April 19, 2007

Regulation SHO threshold list, coupled with the lack of any meaningful transparency of failures to deliver in its stock, is perhaps the best evidence that the SEC should act *now* to fix Regulation SHO. We see no justification for further delay.

On July 14, 2006, when the SEC proposed amendments to Regulation SHO, it set a comment deadline of September 19, 2006. At the close of the prescribed period, public comments totaled nearly 300 – and most urged adoption of the proposed amendments.⁵ After the comment period closed, the SEC received and made public a handful of additional letters from entities which opposed abusive naked short sellers' having to deliver what they sold. Three had complained that they could not comment properly without additional data (data which we believe was, in fact, already publicly available). By reopening the comment period, the SEC has delayed unnecessarily implementation of these amendments. In doing so, it appears the SEC has left itself open to the charge that it has become the classic "captured regulator" of economics' fame, regulating to the benefit of an industry whose oversight (not furtherance) was its original purpose. Shareholders and public companies deserve better, even if "better" means that large and powerful Wall Street money interests would be discomfited by having to deliver that which they sell.

Thus, we (1) reiterate our support for immediate adoption of the proposed changes, namely, (a) eliminate the "grandfather provision," and (b) tighten the close-out requirement under the market maker exception, and (2) again urge the Commission to quickly adopt at least the following two additional measures (measures supported by numerous comment letters, including those from members of Congress, state legislators, executives, academics, business organizations, and public companies): (a) require prompt disclosure of the current volume of failures to deliver, and (b) require a firm pre-borrow prior all short sales.

Even the data the SEC disclosed in support of the currently amendments, while showing a sizable potential reduction in the number of persistent fails by their implementation, also demonstrate that the solution proposed is substantially incomplete; and, while a perfect solution may be out of the SEC's reach, a better solution is not. We continue to assert *a more global and complete solution to the problem is necessary*.

Without more transparency (i.e., prompt disclosure of the current volume of failures to deliver) and without a firm pre-borrow in short-selling transactions, abuses in this area will certainly persist and those profiting from these abuses will continue to exploit existing loopholes in the regulatory structure until the SEC will again be forced take up additional, remedial measures. We urge the SEC against the piecemeal approach of adopting only the current measures while leaving untouched the more comprehensive and common-sense solutions proposed by these many commentators.

⁵ The SEC continued to receive many public comments (by our count, over another 200) before the SEC re-opened the comment period on March 26, 2007. Many of these also urged both the adoption of the proposed amendments and further remedial measures.

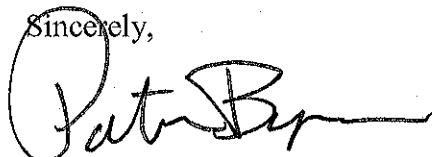
Ms. Nancy M. Morris

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April 19, 2007

Overstock continues to hope that the SEC will put an end to the practice of abusive naked short selling without further pause on the road to that objective. We continue to see support in the broader market and, importantly among shareholders and public companies, for more fairness and transparency in the practice of trading by means of short sales. We believe this direction and these developments will lead to stronger, fairer and more robust markets. For these reasons, and more, we urge that the SEC (1) adopt immediately the two proposed amendments, and (2) adopt promptly the amendments proposed that require meaningful and current disclosure of the volume of failures to deliver and a firm pre-borrow of shares in short selling transactions.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Byrne". The signature is written in a cursive, flowing style with a large initial "P".

Patrick M. Byrne

Chairman and Chief Executive Officer

Enclosures

cc: Christopher Cox, Chairman, U.S. Securities and Exchange Commission
Paul S. Atkins, Commissioner, U.S. Securities and Exchange Commission
Roel C. Campos, Commissioner, U.S. Securities and Exchange Commission
Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission
Annette L. Nazareth, Commissioner, U.S. Securities and Exchange Commission
Robert L. Colby, Acting Director, Division of Market Regulation, U.S. Securities and
Exchange Commission
John W. White, Director, Division of Corporation Finance, U.S. Securities and Exchange
Commission



Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121
Phone: (801) 947-3100
Fax: (801) 947-3144

Via Electronic Submission and Overnight Mail

September 11, 2006

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: Comments on Proposed Amendments to Regulation SHO
File No S7-12-06 (17 CFR Part 242, Rel. No. 34-54154)

Dear Secretary Morris:

Overstock.com, Inc., a Delaware corporation with its principal offices and operations located in Utah, is an online "closeout" retailer whose shares are publicly traded on the NASDAQ(GM). Overstock is pleased to comment on the SEC's proposed amendment to Regulation SHO.

Overstock has been continuously on the Regulation SHO threshold list since January 2005, with exception of a brief 20 day period in March and April 2005. While Overstock itself has been unable to learn from the SEC or the DTCC¹ the amount of fails to deliver in its stock since the adoption of Regulation SHO, according to a FOIA response issued by the SEC to a third party, the fails to deliver in Overstock increased from as little as 13,197 to as high as 2,321,990 during 2005². Thus, Overstock believes it is uniquely qualified to provide an issuer's viewpoint on the proposals, as well as other measures the SEC should adopt to stop current abusive short selling practices.

The SEC's release proposing the amendments to Regulation SHO, while noting beneficial effects since the adoption of Regulation SHO, acknowledges "substantial and persistent fail to deliver positions that are not being closed out under existing delivery and settlement guidelines."³ Overstock's experience with Regulation SHO underscores the point. As noted above, Overstock was continuously on the Regulation SHO threshold list throughout 2005 and 2006, and, despite Regulation SHO's aim to curb fails to deliver, during 2005 fails in Overstock's shares grew 63 times their original size, from 36,681 in January, to over 2,321,990 in December.⁴ Other public

¹ See Exhibit "A" for correspondence with these entities.

² See Exhibit "B" FOIA Request 06-05783-FOIA.

³ Release, at 7-8.

⁴ See Exhibit "B." Overstock understands that the SEC sent a FOIA response to Floyd Norris of the New York Times that showed the amount of fails in Overstock shares grew to over 3.8 million during the second quarter of 2006; however, Overstock has not seen the actual FOIA response letter sent by the SEC to Mr. Norris.

companies have experienced similar results. Overstock's experience, and that of these other companies, demonstrates that while Regulation SHO may have some beneficial effects in the market generally, it comes seriously short of the mark in conferring these effects equally on all market participants.

Overstock believes the SEC's proposed amendments (i.e., repeal of the grandfather provision and narrowing of the options market maker exception) are good first steps toward adequate regulation of short selling activities. However, Overstock believes that two additional reform elements are necessary:

1. Transparency – Disclose the Volume of Fails. The SEC should amend Regulation SHO so that the aggregate volume of fails to deliver is reported daily for each threshold security – including fails to deliver that occur within the DTCC and outside the DTCC in “ex-clearing” transactions.⁵
2. Ownership – Require a Pre-Borrow for All Short Sales. The SEC should require that before any seller can short sell a stock, that seller must either have the stock in his possession (and have the right to sell it) or have entered into a bona fide contract to borrow the stock in advance of the sale.

During the SEC's July 12, 2006 hearing, Chairman Cox made it clear that the substantial number of persistent delivery failures highlights a serious problem, albeit one that he felt was primarily concentrated in a small percentage of equity securities. Overstock believes, however, that the number of overall persistent settlement failures and the number of issuers whose equity securities have persistent settlement failures will increase dramatically unless the SEC takes specific action on the present proposal and on additional measures proposed in this letter.

Amendments Proposed by the SEC

Grandfather Provision

When adopted, Regulation SHO's close-out requirements did not apply to positions that were established prior to the effective date of Regulation SHO, nor to positions in a security prior to its listing as a threshold security. The articulated justification for this grandfather provision, as noted in the proposing Release, was concern “about creating volatility through short squeezes.”⁶

⁵ Regulation SHO should provide the SEC with enforcement powers over the broker-to-broker contractual arrangement allowed by the Commission's Rules 15c3-3 and 15c6-1. The SEC must have the authority to review and enforce these contracts where these contracts clearly identify the “intent” to settle in 3 days. The SEC cannot rely on brokers to police each other on contracts because there is too high an incentive to forgive each other's delays. The SEC must penalize the buy-side broker who does not force the prompt settlement of a trade.

⁶ See Release at 7-8.

However, this grandfathering of short positions threatens an equal measure of market volatility, only in the opposite (downward) direction because of the strong incentive to sell additional shares short to have them grandfathered prior to the implementation or listing date. Additionally, short squeezes have the beneficial effect of creating discipline in the market. It is unclear where the SEC might draw the line between "good" market volatility and "bad" market volatility – but certainly, it cannot be along the lines of favoring downward price pressure over price increases owing to short squeezes.

Overstock encourages the SEC to adopt its proposed amendment to remove Regulation SHO's thumb from the economic scale by abating all grandfathering provisions according to the phase-in schedule proposed in the Release. Overstock also encourages the SEC to escalate its examination and enforcement of compliance in this area – again, both in DTCC and "ex-clearing" transactions (see footnote 5).

Narrowing the Market Maker Exemption

Overstock supports the proposed narrowing of the close-out requirement under the market maker exception. Thirteen days should be more than sufficient time to close-out a failure to deliver related to an options position.

Additional Amendments Needed to Solve the Problem

Transparency – Disclose the Volume of Fails

Overstock agrees with Commissioner Atkins' position that aggregate fail data should be disclosed. Sunshine is the great disinfectant and more transparency will lead to the elimination of abuses and to more investor confidence and security. Without this full disclosure, it is difficult to know the level of "naked shorting" and its risk to the capital markets.

Issuers need better information about settlement fails to deliver in their shares. Currently, the Regulation SHO threshold lists simply contain the names of companies and dates and do not even quantify the number of shares that were not delivered. As such, it has become the means to impugn these companies by vague implications instead of precise facts. Companies and investors have the right to know more information about the underlying activity in the stock. As noted in above and in Exhibit "A," Overstock itself has been unable obtain from the SEC or the DTCC any information about the amount of fails to deliver in its stock since the adoption of Regulation SHO.⁷

⁷ One articulated reason withholding volume information on failures to deliver is the reluctance to disclose "trading strategies." Overstock fails to see how disclosure of the amount of the aggregated fails to deliver is disclosing any trading strategy. Moreover, if a trading strategy embraces willful failures to deliver, that strategy should not be shielded from the disclosure Overstock proposes.

As a start, Overstock urges the SEC to amend Regulation SHO so that the aggregate volume of fails to deliver is reported daily for each threshold security -- including fails to deliver that occur within the DTCC and outside the DTCC in "ex-clearing" transactions (see footnote 5). Overstock believes that this increased transparency will lead to the elimination of abuses and to more investor confidence and security. Without this full disclosure, it is difficult to know the level of "naked shorting" and its risk to the capital markets. Further, Overstock urges the SEC to work with issuers and the financial services industry to develop a means to disseminate this information to the broader market, which will elevate the threshold list's utility beyond merely being a list of target companies for abusive short sellers.⁸

Ownership – Require a Pre-Borrow (or at least a Firm Pre-Locate) for All Short Sales

Short selling oversight must include reliable locate, borrow and delivery components. Currently, under Regulation SHO, prior to initiating a short sale where the selling broker or customer is not in possession of the shares, the short seller need only have "reasonable grounds" to believe that the security can be borrowed so that the security can be delivered on the delivery date. This "reasonable grounds" standard amounts to an enormous loophole of which abusive short sellers take full advantage; it is a fuzzy standard, fraught with uncertainty, inviting abusive short sellers to test the limits of the SEC's already strained enforcement resources.

The "reasonable grounds" standard creates a serious problem in an overestimation of the availability of stock for borrow. When a borrowed share is not taken out of the pool of stock available to complete a valid "locate," the share can be re-"located" many times without ever being borrowed. When it comes time to obtain the stock, many hands reach for the same "located" shares, which of course can only satisfy a single transaction, leaving the others to seek alternative sources, and, if unsuccessful, to fail at delivery.

To remedy the "reasonable grounds" loophole, Overstock urges that the SEC require that a short seller must either have the stock in his possession (and have the right to sell it) or have entered into a bona fide contract to borrow the stock in advance of the sale. This step alone should prevent the majority of willful, strategic fails to deliver. Alternatively, stocks that are "located" for borrow should be, by firm contract, placed in a separate "locate pool," or somehow removed from multiple availability, until the trade has settled, thus eliminating multiple "locates."⁹ If the trade then fails to be executed after a specified period, the "located" stock can be returned to a position of availability for another "locate," and so on. Whatever system is ultimately

⁸ As it should, the SEC requires that issuers disclose their total number of issued shares; this is clearly useful information for shareholders and potential shareholders. Similarly, issuers, shareholders and potential shareholders should be able to access information on the volume of failures to deliver.

⁹ The technology to do this is currently available at locatestock.com.

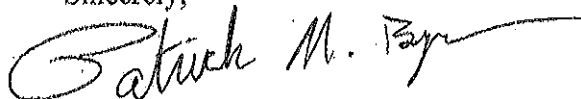
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implemented, it should carefully guard against the "multiple borrow," or "multiple locate" circumstance that is so prevalent and harmful to the capital markets at present.

* * *

The system under the current Regulation SHO allows for abusive and illegitimate short selling. Trades are executed without the basic economic discipline of supply and demand. Indeed, while short selling introduces valuable information into the market, because abusive and illegitimate short selling has no cost to the "seller," its information is valueless. Abusive short selling is used to manipulate markets and purposefully drive down thinly traded stocks to the detriment of investors and our capital markets generally. The SEC must continue to protect innocent investors and public companies by minimizing the manipulation of our capital markets. The interests of abusive short seller must not be placed ahead of investors and employees who often depend on these companies for their livelihood and retirement. Overstock applauds the SEC's review of the problems presented by abusive short selling and strongly urges the SEC to adopt, not only the two amendments proposed in the Release, but also to make the two additional modifications to Regulation SHO proposed in this letter.

Sincerely,



Patrick M. Byrne
Chairman and Chief Executive Officer

Enclosures

cc: Christopher Cox, Chairman, U.S. Securities and Exchange Commission
Paul S. Atkins, Commissioner, U.S. Securities and Exchange Commission
Roel C. Campos, Commissioner, U.S. Securities and Exchange Commission
Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission
Annette L. Nazareth, Commissioner, U.S. Securities and Exchange Commission
Robert L. Colby, Acting Director, Division of Market Regulation, U.S. Securities and Exchange Commission
John W. White, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission

EXHIBIT "A"



Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121
Phone: (801) 947-3114
Fax: (801) 947-3144
Email: JJohnson@Overstock.com

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

April 14, 2006

U.S. Securities & Exchange Commission
FOIA Office, Stop 0-56432
General Green Way, Alexandria, Virginia 22312-2413

RE: FOIA Request for daily aggregate fails data and aggregate daily 'open positions', i.e., shares awaiting delivery either long or short.

Dear Madam or Sir:

We hereby request, pursuant to the Freedom of Information Act, the daily aggregated data for the above subject matter for the security Overstock.Com, Inc., CUSIP number 690370101, traded on the Nasdaq National Market as symbol OSTK, from May 1, 2002 up to the present.

Please provide in electronic database or spreadsheet format (such as Excel) if possible. If convenient, you may email the information to me.

Sincerely,

Jonathan B. Johnson III
SVP, Corporate Affairs & Legal



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
OPERATIONS CENTER
6432 GENERAL GREENWAY
ALEXANDRIA, VA 22312-2418

OFFICE OF FILINGS AND
INFORMATION SERVICES

Mail Stop O-5

May 10, 2006

Mr. Jonathan E. Johnson, III
SVP, Corporate Affairs & Legal
Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 06-04651-FOIA

Dear Mr. Johnson:

This letter partially responds to your request, dated April 14, 2006, and received in this office on April 18, 2006, for certain information concerning Overstock.com, Inc.

Please be advised, we are consulting with other Commission staff regarding information that may be responsive to your request. We will advise you of our findings as soon as we receive a response.

In the interim, if you have any questions, please contact Mrs. Sonja Osborne of this office at (202) 551-8371.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra Walker".

Debra Walker
Lead Research Specialist
FOIA/Privacy Act Office

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

OPERATIONS CENTER
6432 GENERAL GREEN WAY
ALEXANDRIA, VA 22312-2418

OFFICE OF FILINGS AND
INFORMATION SERVICES

Mail Stop O-5

June 12, 2006

Mr. Jonathan Johnson, III
SVP, Corporate Affairs & Legal
Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 06-04651-FOIA

Dear Mr. Johnson:

This letter responds to your request for the daily aggregate "fail to deliver" data for Overstock.com, Inc.

After consultation with the staff, we are withholding the requested data, since it constitute confidential commercial or financial information, the release of which could cause substantial competitive harm to the submitter under 5 U.S.C. § 552 (b) (4), 17 CFR § 200.80 (b) (4).

The data is also being withheld since it is relating to an operating and inspection report prepared by, on behalf of, or for the use of the Commission or any agency responsible for the regulation or supervision of financial institutions under 5 U.S.C. 552 (b) (8), 17 CFR 200.80 (b) (8).

You have the right to appeal our decision to our General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(d)(5) and (6). Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

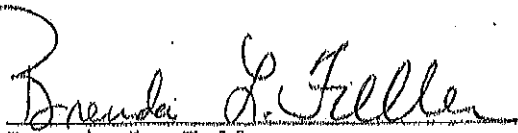
Mr. Jonathan Johnson
June 12, 2006
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Send your appeal to the FOIA/Privacy Act Office,
Securities and Exchange Commission, Operations Center, 6432
General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413,
or deliver it to Room 1418 at that address. Also, send a
copy to our General Counsel, Securities and Exchange
Commission, 100 F Street NE, Washington, D.C. 20549, or
deliver it to Room 1120 at that address.

If you have any questions, please contact Mrs. Sonja
Osborne of my staff at (202)551-8371.

Sincerely,
FOIA/Privacy Act Officer

by:


Brenda L. Fuller
FOIA/Privacy Act Branch Chief



Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121
Phone: (801) 947-3114
Fax: (801) 947-3144
Email: JJohnson@Overstock.com

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 6, 2006

U.S. Securities & Exchange Commission
FOIA Office, Stop 0-56432
General Green Way, Alexandria, Virginia 22312-2413

RE: FOIA Request for daily aggregate fails data and aggregate daily 'open positions', i.e., shares awaiting delivery either long or short, and the terminology used in gathering data on long and short positions in equity securities.

Dear Madam or Sir:

We hereby request, pursuant to the Freedom of Information Act, ("FOIA"), the Aggregate Continuous Net Settlement Failure Data for Overstock.com, Inc. (NASDAQ: OSTK) (CUSIP number 690370101), for the period of January 1, 2004 thru May 1, 2006. We believe that these dates are far enough back in time that this information is no longer considered proprietary to any possible trading strategies and similar data has been provided by the United States Securities and Exchange Commission ("SEC") under FOIA 06-5783, 06-05048, 06-04383, 05-702, 05-7221, 05-7227 and 05-5810. Please provide in electronic database or spreadsheet format (such as Excel) if possible. If convenient, you may email the information to me.

In addition, we request all documents, memoranda, policy statements, staff guidelines, staff manuals, directives, and other such documents or revisions thereto that are currently in effect, or were in effect at any time on or after January 1, 2004, that describe the procedures and policies to be used by the SEC and its enforcement staff in determining how to define reported data regarding legitimate short sales, failed short sales, failed long sales, open sales and any other type of transaction with results in a failure to deliver.

Overstock asserts that nothing in this request does relates to a specific operation or inspection report prepared by, or on behalf of, of for the use of the SEC.

Sincerely,

Jonathan E. Johnson III
SVP, Corporate Affairs & Legal



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549

OFFICE OF FILINGS AND
INFORMATION SERVICES

Mail Stop 5100

August 08, 2006

Mr. Jonathan Johnson
Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 06-07006-FOIA

Dear Mr. Johnson:

This letter partially responds to your request, dated July 06, 2006, and received in this office on July 24, 2006, for information concerning **DAILY AGGREGATE FAILS DATA AND AGGREGATE DAILY OPEN POSITIONS**.

Please be advised, we are consulting with other Commission staff regarding information that may be responsive to your request. We will advise you of our findings, as well as the actual cost to review the records, as soon as we receive a response.

In the interim, if you have any questions, please call me at (202) 551-8323.

Sincerely,

A handwritten signature in dark ink that reads "Ollie R. Wade".

Ollie R. Wade
FOIA/Privacy Act Research Specialist



Overstock.com, Inc.
6322 South 3000 East, Suite 100
Salt Lake City, UT 84121
Phone: (801) 947-3114
Fax: (801) 947-3144
Email: JJohnson@Overstock.com

CERTIFIED MAIL

March 4, 2005

Ms. Jill M. Considine, Chairman, CEO and President
Mr. Donald F. Donahue, COO
Richard B. Nesson, Esq, Managing Director and General Counsel
The Depository Trust & Clearing Corporation
55 Water Street
New York, New York 10041-0099

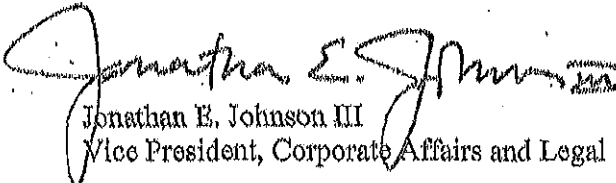
RE: Failure to Deliver

Dear Ms. Considine and Messrs. Donahue and Nesson:

I am the Vice President, Corporate Affairs and Legal of Overstock.com, Inc. (OSTK), a publicly-traded stock listed on NASDAQ.

Overstock.com has been on the Reg SHO Threshold list since January 28, 2005. I would like to find out the size of Overstock.com's failure to deliver. I am told that the DTCC will release that information to me, as an agent from the company. Please tell me what the size of our failures-to-deliver problem is. If you cannot provide this information, please cite the law or regulation which allows you not to do so.

Sincerely,



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

cc: Patrick M. Byrne, Chairman and President, Overstock.com

PROSKAUER ROSE LLP

1508 Broadway
New York, NY 10036-8209
Telephone 212.969.3000
Fax 212.969.2900

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PARIS

Edward A. Kwalwasser
Senior Counsel

Direct Dial 212.969.3515
okwalwasser@proskauer.com

March 30, 2005

Jonathan E. Johnson III
Vice President, Corporate Affairs and Legal
Overstock.com, Inc.
6322 South 3000 East, Suite 100
Salt Lake City, UT 84121


Dear Mr. Johnson:

This is in response to your letter of March 4, 2005 to Depository Trust & Clearing Corporation in which you request certain trading and clearing information regarding Overstock.com common stock.

As counsel for National Securities Clearing Corporation ("NSCC") I regret to inform you that the information you seek is confidential information of participants of NSCC. Pursuant to NSCC's Rule 49 this information is not available for public inspection and may not be released to entities other than regulatory or self-regulatory organizations.

I am sorry that we could not be of any greater help in this matter.

Very truly yours,


Edward A. Kwalwasser

EAK:mig

EXHIBIT "B"



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
OPERATIONS CENTER
6432 GENERAL GREENWAY
ALEXANDRIA, VA 22312-2413

OFFICE OF FILINGS AND
INFORMATION SERVICES

Mail Stop O-5

June 15, 2006

David E. Patch
21 Pheasant Lane
Topsfield, MA 01983

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 06-05783-FOIA

Dear Mr. Patch:

This letter is our final response to your request for information concerning Overstock.com.

After consulting with the staff, we have determined to release the requested information (copy enclosed), which may be responsive to your request.

If you have any questions, please contact me at (202) 851-8352.

Sincerely,

A handwritten signature in cursive script that reads "Jason Luetkenhaus".

Jason Luetkenhaus
FOIA/Privacy Act Research Specialist

Enclosure

FOIA05783

Total Falls by Date for Overstock.com
January 1, 2005 to December 31, 2005

Date	Total Falls (shares)
20050103	39,681
20050104	37,113
20050105	37,144
20050106	38,354
20050107	25,314
20050110	89,963
20050111	28,675
20050112	44,367
20050113	146,039
20050114	69,054
20050115	64,488
20050116	98,660
20050120	91,416
20050121	120,814
20050124	191,559
20050125	140,805
20050126	271,935
20050127	281,055
20050128	373,366
20050131	437,238
20050201	639,018
20050202	593,320
20050203	475,529
20050204	446,201
20050207	341,969
20050208	277,428
20050209	245,039
20050210	332,472
20050211	398,683
20050214	247,270
20050216	243,687
20050216	277,034
20050217	277,191
20050218	343,255
20050222	246,488
20050223	230,959
20050224	181,524
20050225	146,282
20050228	67,625
20050301	67,379
20050302	94,060
20050303	106,599
20050304	81,903
20050307	196,222
20050308	224,163
20050309	178,812
20050310	145,595
20050311	196,127

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20050314	210,392
20050316	42,497
20050318	49,204
20050317	90,840
20050318	142,950
20050321	85,922
20050322	30,048
20050323	68,578
20050324	69,616
20050328	22,898
20050328	13,197
20050330	23,151
20050331	24,432
20050401	34,119
20050404	23,101
20050405	41,089
20050406	40,131
20050407	85,190
20050408	74,848
20050411	82,895
20050412	176,366
20050413	38,072
20050414	20,392
20050415	61,585
20050418	185,908
20050419	163,839
20050420	182,089
20050421	283,483
20050422	215,888
20050423	191,933
20050426	608,172
20050427	374,802
20050428	613,162
20050429	424,487
20050502	455,334
20050503	596,307
20050504	911,402
20050505	1,217,695
20050506	1,066,251
20050509	903,294
20050510	645,866
20050511	643,022
20050512	488,267
20050513	504,895
20050516	535,493
20050517	623,532
20050518	624,069
20050519	787,281
20050520	700,148
20050523	748,422
20050524	747,876
20050525	827,877

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20050528	483,338
20050527	286,744
20050531	266,830
20050601	182,434
20050602	258,481
20050603	417,273
20050606	475,498
20050607	483,488
20050608	432,019
20050609	336,105
20050610	305,607
20050613	388,571
20050614	180,316
20050616	202,481
20050618	185,558
20050617	96,206
20050620	209,769
20050621	95,817
20050622	479,412
20050623	486,598
20050624	494,381
20050627	494,790
20050628	453,930
20050629	333,929
20050630	202,728
20050701	238,415
20050705	214,952
20050706	236,927
20050707	203,218
20050708	355,417
20050711	401,312
20050712	468,728
20050713	568,789
20050714	626,255
20050715	584,153
20050718	584,138
20050719	456,870
20050720	503,574
20050721	445,819
20050722	492,312
20050725	472,453
20050726	417,918
20050727	422,271
20050728	448,803
20050729	504,123
20050801	550,185
20050802	591,021
20050803	989,744
20050804	1,092,516
20050805	1,133,014
20050808	1,127,782
20050809	1,006,832

FOIA06783

20050810	994,948
20050811	945,792
20050812	874,639
20050815	870,509
20050816	866,105
20050817	1,040,286
20050818	1,223,226
20050819	1,198,478
20050822	1,209,616
20050823	1,262,626
20050824	979,699
20050825	1,068,887
20050829	1,043,878
20050829	1,046,328
20050830	1,061,091
20050831	1,036,244
20050901	1,062,460
20050902	1,089,422
20050906	1,103,302
20050907	1,249,861
20050908	1,224,503
20050909	1,154,985
20050912	1,199,625
20050913	1,203,792
20050914	1,080,950
20050915	1,106,487
20050916	1,045,236
20050919	1,203,140
20050920	1,319,187
20050921	1,295,651
20050922	1,348,562
20050923	1,503,029
20050923	1,747,719
20050927	1,841,123
20050928	1,869,245
20050929	1,877,718
20050930	1,903,826
20051003	1,921,371
20051004	1,965,903
20051005	1,973,726
20051006	1,776,791
20051007	1,973,086
20051011	1,871,592
20051012	1,869,843
20051013	1,874,587
20051014	1,892,839
20051017	2,096,239
20051018	2,195,093
20051019	2,175,433
20051020	2,076,898
20051021	2,190,774
20051024	2,321,990

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20051025	2,308,434
20051026	2,076,317
20051027	2,061,781
20051028	2,094,374
20051031	2,158,703
20051101	2,219,904
20051102	2,254,706
20051103	2,208,882
20051104	2,136,209
20051107	2,063,731
20051108	1,875,256
20051109	1,927,953
20051110	2,050,243
20051114	2,103,252
20051115	2,100,628
20051116	2,066,507
20051117	2,082,433
20051118	2,120,031
20051121	2,130,961
20051122	2,060,390
20051123	2,075,771
20051125	2,122,541
20051128	2,100,865
20051129	2,099,440
20051130	2,068,314
20051201	2,087,263
20051202	2,074,615
20051205	2,139,319
20051206	2,130,889
20051207	1,949,787
20051208	1,837,230
20051209	1,965,407
20051212	1,953,691
20051213	1,879,452
20051214	1,753,766
20051215	1,768,461
20051216	1,899,010
20051219	1,812,231
20051220	1,848,852
20051221	2,166,747
20051222	2,082,349
20051223	2,105,501
20051227	2,111,883
20051228	2,131,278
20051229	2,026,648
20051230	2,062,328

Note: Includes all dates with at least 10,000 shares in total falls.
Source: DTCC

EXHIBIT "B"

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 29, 2006

U.S. Securities & Exchange Commission
FOIA Office, Stop 0-56432
General Green Way, Alexandria, Virginia 223 12-2413

RE: FOIA Request for daily aggregate fails data and aggregate daily 'open positions', i.e., shares awaiting delivery either long or short.

Dear Madam or Sir:

We hereby request, pursuant to the Freedom of Information Act, ("FOIA"), the Aggregate Continuous Net Settlement Failure Data for Overstock.com, Inc. (NASDAQ: OSTK) (CUSIP number 690370101), for the period of May 1, 2006 through October 31, 2006. We believe that these dates are far enough back in time that this information is no longer considered proprietary to any possible trading strategies. The United States Securities and Exchange Commission (the "SEC") has previously provided us similar data for the period of January 1, 2004 through May 1, 2006 under FOIA 06-07006.

If possible, please provide the requested information in electronic database or spreadsheet format (such as Excel). If convenient, you may email the requested information to me.

Overstock asserts that nothing in this request related to a specific operation or inspection report prepared by, or on behalf of, or for the use of the SEC.

Sincerely,

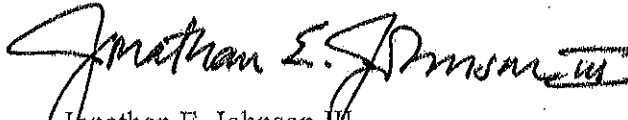

Jonathan E. Johnson III
SVP, Corporate Affairs and Legal

EXHIBIT "C"



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549

OFFICE OF FILINGS AND
INFORMATION SERVICES

Mail Stop 5100

March 29, 2007

Mr. Jonathan Johnson
Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 07-02790-FOIA

Dear Mr. Johnson:

This letter partially responds to your request, dated December 29, 2006, and received in this office on January 09, 2007, for Aggregate Continuous Net Settlement Failure Data relating to **Overstock.com, Inc.**, (NASDAQ:OSTK) for the period of May 1, 2006, through October 31, 2006.

Access is granted to enclosed data sheet for the period May 1, 2006, through June 30, 2006.

Please be advised, we are still consulting with other Commission staff regarding additional information that may be responsive to your request. We will advise you of our findings, as well as the actual cost to review the records, as soon as we receive a response.

In the interim, if you have any questions, please call me at (202) 551-8330.

Sincerely,

A handwritten signature in cursive script that reads "Tina Churchman".

Tina Churchman

FOIA/Privacy Act Research Specialist

Enclosure

Transaction Date	CNS Name	Total Failed Amount In
5/1/2006	OVERSTOCK COM INC DEL	2716043
5/2/2006	OVERSTOCK COM INC DEL	2811085
5/3/2006	OVERSTOCK COM INC DEL	2743078
5/4/2006	OVERSTOCK COM INC DEL	2747713
5/5/2006	OVERSTOCK COM INC DEL	2508416
5/8/2006	OVERSTOCK COM INC DEL	2529583
5/9/2006	OVERSTOCK COM INC DEL	2661979
5/10/2006	OVERSTOCK COM INC DEL	2643101
5/11/2006	OVERSTOCK COM INC DEL	2427281
5/12/2006	OVERSTOCK COM INC DEL	2454720
5/15/2006	OVERSTOCK COM INC DEL	2611875
5/16/2006	OVERSTOCK COM INC DEL	2464004
5/17/2006	OVERSTOCK COM INC DEL	2432090
5/18/2006	OVERSTOCK COM INC DEL	2619594
5/19/2006	OVERSTOCK COM INC DEL	2520276
5/22/2006	OVERSTOCK COM INC DEL	2500888
5/23/2006	OVERSTOCK COM INC DEL	2473832
5/24/2006	OVERSTOCK COM INC DEL	2669636
5/25/2006	OVERSTOCK COM INC DEL	2706061
5/26/2006	OVERSTOCK COM INC DEL	2722593
5/30/2006	OVERSTOCK COM INC DEL	2663454
5/31/2006	OVERSTOCK COM INC DEL	2664469
6/1/2006	OVERSTOCK COM INC DEL	2649733
6/2/2006	OVERSTOCK COM INC DEL	2528071
6/5/2006	OVERSTOCK COM INC DEL	2634950
6/6/2006	OVERSTOCK COM INC DEL	2540290
6/7/2006	OVERSTOCK COM INC DEL	2327625
6/8/2006	OVERSTOCK COM INC DEL	2365968
6/13/2006	OVERSTOCK COM INC DEL	2143610
6/14/2006	OVERSTOCK COM INC DEL	2279354
6/19/2006	OVERSTOCK COM INC DEL	2223337
6/20/2006	OVERSTOCK COM INC DEL	2306672
6/21/2006	OVERSTOCK COM INC DEL	2298655
6/22/2006	OVERSTOCK COM INC DEL	2209387
6/23/2006	OVERSTOCK COM INC DEL	2246975
6/26/2006	OVERSTOCK COM INC DEL	2264558
6/27/2006	OVERSTOCK COM INC DEL	2301312
6/28/2006	OVERSTOCK COM INC DEL	2194364
6/29/2006	OVERSTOCK COM INC DEL	2336515
6/30/2006	OVERSTOCK COM INC DEL	2328968