

OVERSTOCK.COM, INC  
Form S-3/A  
November 21, 2008  
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As filed with the Securities and Exchange Commission on November 21, 2008

Registration No. 333-153087

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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Pre - Effective Amendment No. 1 to

**FORM S-3**

**REGISTRATION STATEMENT**

**UNDER THE SECURITIES ACT OF 1933**

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**OVERSTOCK.COM, INC.**

(Exact name of registrant as specified in its charter)

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Delaware

87-0634302

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(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification Number)

6350 South 3000 East

Salt Lake City, Utah 84121

(801) 947-3100

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Jonathan E. Johnson III**  
President  
Overstock.com, Inc.  
6350 South 3000 East  
Salt Lake City, Utah 84121  
(801) 947-3100  
(Name, address, including zip code,  
and telephone number, including area  
code, of agent for service)

**Copies to:**  
**Thomas W. Adkins**  
Bracewell & Giuliani LLP  
111 Congress, Suite 2300  
Austin, Texas 78701  
(512) 472-7800

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**Approximate date of commencement of proposed sale to the public:**

**From time to time after the effective date of this Registration Statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, dated November 20, 2008**

PROSPECTUS

**\$500,000,000**

**Debt Securities**

**Common Stock**

**Preferred Stock**

**Warrants**

**Stock Purchase Contracts**

**Units**

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Overstock.com, Inc. may offer from time to time in one or more offerings together or separately:

- Senior debt securities;
- Subordinated debt securities;
- Common stock;

- Preferred stock;
- Warrants to purchase debt securities, common stock, preferred stock or units;
- Stock Purchase Contracts; or
- Units.

The total amount of these securities will have an initial aggregate offering price of up to \$500,000,000, or the equivalent amount in other currencies, currency units or composite currencies. Our common stock is listed on The Nasdaq Global Market under the symbol OSTK . On November 19, 2008, the last reported sale price was \$7.93 per share.

We may sell these securities directly to investors, through agents designated from time to time or to or through underwriters or dealers. For additional information on the methods of sale, you should refer to the section entitled Plan of Distribution in this prospectus. If any underwriters are involved in the sale of any securities with respect to which this prospectus is being delivered, the names of such underwriters and any applicable commissions or discounts will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest. **This prospectus may not be used to offer and sell securities unless accompanied by a prospectus supplement.**

**Investing in our securities involves a high degree of risk. See Risk Factors beginning on page 1 to read about factors you should consider before buying our securities.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

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**The date of this prospectus is .**

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**ABOUT THIS PROSPECTUS**

This document is called a prospectus and is part of a registration statement that we have filed with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this shelf process, we may, from time to time, sell any or all of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$500,000,000.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement containing specific information about the terms of the securities we are offering. That prospectus supplement may include a discussion of any additional risk factors or other special considerations that apply to those securities. The prospectus supplement also may add, update or change information in this prospectus. You should read both this prospectus and the prospectus supplement, including the risk factors, together with additional information described below under the heading **Where You Can Find More Information** and **Documents Incorporated by Reference**.

You should rely only on the information provided in this prospectus and any applicable prospectus supplement, including the information incorporated by reference. Neither we, nor any underwriters, dealers or agents, have authorized anyone to provide you with different information.

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus to **Overstock.com**, **Overstock**, the **Company**, **we**, **us**, **our**, or similar references mean Overstock.com, Inc. Overstock.com and Worldstock are registered trademarks, and Worldstock.com, Club O and Overstock.com Wholesale are trademarks of Overstock.com, Inc. The Overstock.com logo and Worldstock.com logo are also trademarks of Overstock.com, Inc. Other service marks, trademarks and trade names referred to in this prospectus are property of their respective owners.

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**OVERSTOCK.COM, INC.**

We are an online closeout retailer offering discount brand name merchandise, including bed-and-bath goods, home décor, kitchenware, watches, jewelry, electronics and computers, sporting goods, apparel, and designer accessories, among other products. We also sell books, magazines, CDs, DVDs, videocassettes and video games. We also operate as part of our Website an online auctions site a marketplace for the buying and selling of goods and services as well as an online site for dealers to list and customers to find cars for sale, and a real estate site that allows buyers to identify properties for sale.

Our company, based in Salt Lake City, Utah, was founded in 1997, and we launched our first Website through which customers could purchase products in March 1999. Our Website offers our customers an opportunity to shop for bargains conveniently, while offering our suppliers an alternative inventory liquidation channel. We continually add new, limited inventory products to our Website in order to create an atmosphere that encourages customers to visit frequently and purchase products before our inventory sells out. We offer approximately 121,000 products under multiple departments under the Shopping section of our Website, and approximately 500,000 media products in the Books etc. department on our Website.

Closeout merchandise is typically available in inconsistent quantities and often is only available to consumers after it has been purchased and resold by disparate liquidation wholesalers. We believe that the traditional liquidation market is therefore characterized by fragmented supply and fragmented demand. We utilize the Internet to aggregate both supply and demand and create a more efficient market for liquidation merchandise. Our objective is to provide a one-stop destination for discount shopping for products and services sold through the Internet.

Our principal executive offices are located at 6350 South 3000 East, Salt Lake City, Utah 84121, and our telephone number is (801) 947-3100. Our main Website address is [www.overstock.com](http://www.overstock.com). The information contained on our Websites is not part of this prospectus.

**RISK FACTORS**

Investing in our securities involves significant risks. Please see the risk factors under the heading "Risk Factors" in our periodic reports filed with the SEC under the Securities Exchange Act of 1934, as amended, which are incorporated by reference in this prospectus. Before making an investment decision, you should carefully consider these risks as well as other information we include or incorporate by reference in this prospectus and any prospectus supplement. The risks and uncertainties we have described are not the only ones facing our company. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business operations.



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**FORWARD-LOOKING STATEMENTS**



## Edgar Filing: OVERSTOCK.COM, INC - Form S-3/A

This prospectus includes or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The words anticipate, believe, estimate, will, may, intend and expect and similar expressions generally identify forward-looking statements. Although we believe that our plans, intentions and expectations reflected in the forward-looking statements are reasonable, we cannot be sure that they will be achieved. Important factors that could cause actual results to differ materially from our forward-looking statements are listed below, and additional important factors are set forth in the section entitled Risk Factors in this prospectus, in any section entitled Risk Factors in supplements to this prospectus, and in the documents incorporated by reference into this prospectus. Forward-looking statements in this prospectus include, but are not limited to, statements concerning:

- the anticipated benefits and risks of our business relationships;
- our ability to attract retail and business customers;
- the anticipated benefits and risks associated with our business strategy;
- our future operating results;
- the anticipated size or trends of the market segments in which we compete and the anticipated competition in those markets;
- potential government regulation;
- our future capital requirements and our ability to satisfy our capital needs;
- our expansion in international markets;
- the potential for additional issuances of our securities;
- our plans to devote substantial resources to our sales and marketing teams;
- the possibility of future acquisitions of businesses, products or technologies;
- our belief that we can attract customers in a cost-efficient manner;
- our strategy to develop strategic business relationships with additional wholesalers and distributors;
- our strategy to reduce costs associated with our existing expense structure and the anticipated associated benefits;
- our belief that current or future litigation will likely not have a material adverse effect on our business;
- the ability of our online marketing campaigns to be a cost-effective method of attracting customers;
- our belief that we can internally develop cost-effective branding campaigns;
- the results of upgrades to our infrastructure and the likelihood that additional future upgrades can be implemented without disruption of our business;
- our belief that manufacturers will recognize us as an efficient liquidation solution;
- our belief that we can meet our published product shipping standards even during periods of relatively high sales

activity;

- our belief that we can maintain or improve upon customer service levels that we and our customers consider acceptable;
- our belief that our information technology infrastructure can and will support our operations and will not suffer significant downtime;
- the potential effects of our facilities consolidation and restructuring program and of the various actions we have taken in connection with that program;
- the possibility that we will relocate our corporate offices;
- statements about our community site business and its anticipated functionality;
- our belief that we can maintain inventory levels at appropriate levels despite the seasonal nature of our business; and
- our belief that we can successfully offer and sell a constantly changing mix of products and services.

These factors are not intended to represent a complete list of the general or specific factors that may affect us. It should be recognized that other factors, including general economic factors and business strategies, may be significant, now or in the future, and the factors set forth in this prospectus may affect us to a greater extent than indicated. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements set forth in or incorporated by reference into this prospectus. Except as required by law, we undertake no obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise.

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**USE OF PROCEEDS**



## Edgar Filing: OVERSTOCK.COM, INC - Form S-3/A

Unless otherwise indicated in any prospectus supplement, the net proceeds from the sale of securities offered by this prospectus will be used for general corporate purposes and working capital, including sales and marketing activities and inventory purchases.

### RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges for each of the periods indicated is as follows (dollars in thousands):

	Year ended December 31,					Nine Months Ended September 30,	
	2003 (Restated)	2004 (Restated)	2005 (Restated)	2006 (Restated)	2007 (Restated)	2007 (Restated)	2008 (unaudited)
Ratio of earnings to fixed charges	NA	NA	NA	NA	NA	NA	NA
Deficiency of earnings to fixed charges	\$ 11,981	\$ 4,414	\$ 22,641	\$ 99,880	\$ 44,112	\$ 37,642	\$ 13,672

For the purpose of this computation, the term **fixed charges** means the sum of the following: (a) interest expensed and capitalized, (b) amortized premiums, discounts and capitalized expenses related to indebtedness and (c) an estimate of the interest within rental expense. The term **earnings** is the amount resulting from adding the following items: (a) Pre-tax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, plus (b) fixed charges, plus (c) amortization of capitalized interest, plus (d) distributed income of equity investees, plus (e) our share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges, less the following: (a) interest capitalized, (b) preference security dividend requirements of consolidated subsidiaries, and (c) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges.

The ratio of earnings to fixed charges was less than 1.00x for all periods presented. Thus, earnings available for fixed charges were inadequate to cover fixed charges for such periods. The dollar amounts of the deficiencies are shown above.

As of the date of this prospectus, we had no preferred stock outstanding.



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**DESCRIPTION OF THE DEBT SECURITIES**

The debt securities may be either secured or unsecured and will either be our senior debt securities or our subordinated debt securities. The debt securities will be issued under one or more separate indentures between us and a trustee. Senior debt securities will be issued under a senior indenture, and subordinated debt securities will be issued under a subordinated indenture. Together, the senior indenture and the subordinated indenture are called indentures. This prospectus, together with the applicable prospectus supplement, will describe the material terms of a particular series of debt securities.

The following is a summary of selected provisions and definitions of the indentures and debt securities to which any prospectus supplement may relate. The summary of selected provisions of the indentures and the debt securities appearing below is not complete and is subject to, and qualified entirely by reference to, all of the provisions of the applicable indenture and certificates evidencing the applicable debt securities. For additional information, you should read the applicable indenture and the certificate evidencing the applicable debt security. In this description of the debt securities, the terms Overstock.com, we, us or our refer only to Overstock.com, Inc., and not to any of our subsidiaries, unless we expressly state otherwise or the context otherwise requires.

The following description sets forth selected general terms and provisions of the applicable indenture and debt securities to which any prospectus supplement may relate. Other specific terms of the applicable indenture and debt securities will be described in the applicable prospectus supplement. If any particular terms of the indenture or debt securities described in a prospectus supplement differ from any of the terms described below, then the terms described below will be deemed to have been superseded by that prospectus supplement.

**General**

Debt securities may be issued in separate series without limitation as to aggregate principal amount. We may specify a maximum aggregate principal amount for the debt securities of any series.

We are not limited as to the amount of debt securities we may issue under the indentures. Unless otherwise provided in a prospectus supplement, a series of debt securities may be reopened to issue additional debt securities of such series.

The prospectus supplement relating to a particular series of debt securities will set forth:

- whether the debt securities are senior or subordinated;
- the offering price;

- the title;
  
- any limit on the aggregate principal amount;
  
- the person who shall be entitled to receive interest, if other than the record holder on the record date;
  
- the date or dates the principal will be payable;
  
- the interest rate or rates, which may be fixed or variable, if any, the date from which interest will accrue, the interest payment dates and the regular record dates, or the method for calculating the dates and rates;
  
- the place where payments may be made;
  
- any mandatory or optional redemption provisions or sinking fund provisions and any applicable redemption or purchase prices associated with these provisions;

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- if issued other than in denominations of \$1,000 or any multiple of \$1,000, the denominations in which the debt securities shall be issuable;
- if applicable, the method for determining how the principal, premium, if any, or interest will be calculated by reference to an index or formula;
- if other than United States currency, the currency or currency units in which principal, premium, if any, or interest will be payable and whether we or a holder may elect payment to be made in a different currency;
- the portion of the principal amount that will be payable upon acceleration of maturity, if other than the entire principal amount;
- if the principal amount payable at stated maturity will not be determinable as of any date prior to stated maturity, the amount or method for determining the amount which will be deemed to be the principal amount;
- if applicable, whether the debt securities shall be subject to the defeasance provisions described below under Satisfaction and Discharge; Defeasance or such other defeasance provisions specified in the applicable prospectus supplement for the debt securities;
- any conversion or exchange provisions;
- whether the debt securities will be issuable in the form of a global security;
- any subordination provisions applicable to the subordinated debt securities if different from those described below under Subordinated Debt Securities ;
- any paying agents, authenticating agents, security registrars or other agents for the debt securities;

- any provisions relating to any security provided for the debt securities, including any provisions regarding the circumstances under which collateral may be released or substituted;
- any deletions of, additions to or changes in, the events of default, acceleration provisions or covenants;
- any provisions relating to guaranties for the securities and any circumstances under which there may be additional obligors; and
- any other specific terms of such debt securities.

Unless otherwise specified in the prospectus supplement, the debt securities will be registered debt securities.

Debt securities may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate which at time of issuance is below market rates. The United States federal income tax considerations applicable to debt securities sold at a discount will be described in the applicable prospectus supplement.

#### **Exchange and Transfer**

Debt securities may be transferred or exchanged at the office of the security registrar or at the office of any transfer agent designated by us.

We will not impose a service charge for any transfer or exchange, but we may require holders to pay any tax or other governmental charges associated with any transfer or exchange.

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In the event of any partial redemption of debt securities of any series, we will not be required to:

- issue, register the transfer of, or exchange, any debt security of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption and ending at the close of business on the day of the mailing; or
- register the transfer of or exchange any debt security of that series selected for redemption, in whole or in part, except the unredeemed portion being redeemed in part.

Initially, we will appoint the trustee as the security registrar. Any transfer agent, in addition to the security registrar initially designated by us, will be named in the prospectus supplement. We may designate additional transfer agents or change transfer agents or change the office of the transfer agent. However, we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

**Global Securities**

The debt securities of any series may be represented, in whole or in part, by one or more global securities. Each global security will:

- be registered in the name of a depositary that we will identify in a prospectus supplement;
- be deposited with the depositary or nominee or custodian; and
- bear any required legends.

No global security may be exchanged in whole or in part for debt securities registered in the name of any person other than the depositary or any nominee unless:

- the depositary has notified us that it is unwilling or unable to continue as depositary or has ceased to be qualified to act as depositary;

- an event of default is continuing with respect to the debt securities of the applicable series; or
- any other circumstance described in a prospectus supplement has occurred permitting or requiring the issuance of any such security.

As long as the depositary, or its nominee, is the registered owner of a global security, the depositary or nominee will be considered the sole owner and holder of the debt securities represented by the global security for all purposes under the indentures. Except in the above limited circumstances, owners of beneficial interests in a global security will not be:

- entitled to have the debt securities registered in their names;
- entitled to physical delivery of certificated debt securities; or
- considered to be holders of those debt securities under the indenture.

Payments on a global security will be made to the depositary or its nominee as the holder of the global security. Some jurisdictions have laws that require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Institutions that have accounts with the depositary or its nominee are referred to as participants. Ownership of beneficial interests in a global security will be limited to participants and to persons that may hold beneficial interests through participants. The depositary will credit, on its book-entry registration and transfer