KINDRED HEALTHCARE, INC
Form 8-K
May 12, 2011

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

Date of Report (Date of earliest event reported): May 12, 2011

KINDRED HEALTHCARE, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-14057**	**61-1323993**
(State or other jurisdiction of incorporation or organization)	**(Commission File Number)**	**(IRS Employer Identification No.)**

680 South Fourth Street

Louisville, Kentucky

(Address of principal executive offices)

40202-2412

(Zip Code)

Registrant s telephone number, including area code: (502) 596-7300

Not Applicable

(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 to the registrant under any of the following provisions:

x 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))

Item 1.01. Entry into a Material Definitive Agreement.

Amendment of Merger Agreement

The description of the amendment, dated May 12, 2011 to the merger agreement, dated as of February 7, 2011, among Kindred Healthcare, Inc. (Kindred), Kindred Healthcare Development, Inc. and RehabCare Group, Inc. (RehabCare), contained in item 8.01 below and Exhibit 2.1 to this Form 8-K are incorporated herein by reference.

Item 8.01. Other Events.

Settlement of Certain Litigation

As previously disclosed at pages 84-85 of the joint proxy statement/prospectus dated April 26, 2011 under the heading The Merger Litigation Related to the Merger, RehabCare, the members of RehabCare s board of directors and Kindred have been named as defendants in certain actions filed on behalf of RehabCare stockholders challenging the proposed merger of Kindred and RehabCare. As disclosed in the joint proxy statement/prospectus, on February 15, 2011, the Norfolk County Retirement System, a purported stockholder of RehabCare, filed a purported class action lawsuit in the Delaware Court of Chancery (the Court of Chancery) against RehabCare, RehabCare s directors and Kindred (the Norfolk County litigation); on February 28, 2011, City of Pontiac General Employees Retirement System, a purported stockholder of RehabCare, filed a purported class action lawsuit in the Court of Chancery against RehabCare, RehabCare s directors and Kindred (the City of Pontiac litigation); and on March 4, 2011, Plumbers & Pipefitters National Pension Fund, a purported stockholder of RehabCare, filed a purported class action lawsuit in the Court of Chancery against RehabCare, RehabCare s directors and Kindred (the Plumbers & Pipefitters litigation and, together with the Norfolk County litigation and the City of Pontiac litigation, the Delaware litigation).

As also disclosed in the joint proxy statement/prospectus, on March 9, 2011, the Court of Chancery consolidated the Delaware litigation under the caption *In re RehabCare Group, Inc. Shareholders Litigation* and plaintiffs filed a verified consolidated class action complaint on April 5, 2011. Defendants commenced document production on March 30, 2011 and substantially completed it by April 22, 2011. Depositions took place between April 28, 2011 and May 11, 2011.

On May 12, 2011, the defendants entered into a memorandum of understanding with the plaintiffs in the Delaware litigation regarding the settlement of the Delaware litigation. In connection with the settlement contemplated by the memorandum of understanding, (i) Kindred and RehabCare agreed to make certain additional disclosures related to the proposed merger, which are contained in this Form 8-K, (ii) RehabCare agreed to make the payment, at and subject to the closing of the merger between Kindred and RehabCare, of $2,500,000.00 (two million five hundred thousand dollars) in cash into a settlement pool for the benefit of the plaintiff class in *In re RehabCare Group, Inc. Shareholders Litigation*, to be distributed after final approval of the settlement of the Delaware Litigation and (iii) Kindred, Kindred Healthcare Development, Inc. and RehabCare agreed to enter into the amendment, dated May 12, 2011, to the merger agreement, dated as of February 7, 2011, among Kindred, Kindred Healthcare Development, Inc. and RehabCare, the material terms of which are as follows:

- Inclusion of an acknowledgement by Kindred and RehabCare of the waiver of any existing standstill undertakings for the benefit of RehabCare;

- Change of the definition of Company Termination Fee to mean an amount equal to $13,000,000.00 (thirteen million dollars) ; and

- Modification of the agreement to eliminate the requirement for a three-business day period during which Kindred has the right to match a superior proposal

A copy of the amendment is included as Exhibit 2.1 to this Form 8-K and the description of this amendment is qualified by this exhibit which is incorporated herein by reference.

The memorandum of understanding contemplates that the parties will enter into a stipulation of settlement. The stipulation of settlement will be subject to customary conditions, including court approval following notice to RehabCare s stockholders. In the event that the parties enter into a stipulation of settlement, a hearing will be scheduled at which the Court of Chancery will consider the fairness, reasonableness, and adequacy of the settlement. If the settlement is finally approved by the court, it will resolve and release all claims in all actions that were or could have been brought challenging any aspect of the proposed merger, the merger agreement, and any disclosure made in connection therewith, pursuant to terms that will be disclosed to stockholders prior to final approval of the settlement. In addition, in connection with the settlement, the parties contemplate that plaintiffs counsel in the Delaware litigation will file petitions for the award of attorneys fees and expenses to be paid by RehabCare and/or its successor(s) in interest. RehabCare (and/or its successor(s) in interest) shall pay or cause to be paid such award(s) of attorneys fees and expenses. There can be no assurance that the parties will ultimately enter into a stipulation of settlement or that the Court of Chancery will approve the settlement even if the parties were to enter into such stipulation. In such event, the proposed settlement as contemplated by the memorandum of understanding may be terminated.

SUPPLEMENT TO JOINT PROXY STATEMENT/PROSPECTUS

In connection with the pending transaction between Kindred and RehabCare, Kindred has filed with the Securities and Exchange Commission a Registration Statement on Form S-4 (commission file number 333-173050) that includes a joint proxy statement of Kindred and RehabCare that also constitutes a prospectus of Kindred. Set forth below are revised, supplemental versions of the sections that appear under the headings Background of the Merger, Opinion of RehabCare s Financial Advisor CGMI and Opinion of RehabCare s Financial Advisor RBC in the joi proxy statement/prospectus included in such Registration Statement:

The Merger Background of the Merger

As part of its continuing evaluation of strategic alternatives, the RehabCare board of directors and management regularly evaluate RehabCare s business strategy and prospects for growth and consider opportunities to improve RehabCare s operations and financial performance in order to create value for RehabCare stockholders. As part of this process, the RehabCare board of directors, in consultation with RehabCare s management and outside legal and financial advisors, evaluates and pursues a number of opportunities to expand and diversify RehabCare s business.

In late 2007 through early 2008, senior management of RehabCare and Kindred engaged in preliminary discussions regarding a possible acquisition of RehabCare by Kindred but were unable to reach agreement. The lead of the CGMI team advising RehabCare in connection with the current transaction advised Kindred in connection with these preliminary discussions in 2007 and 2008, while employed by another investment advisory firm. The parties considered the complementary aspects of their businesses and the potential benefits that a strategic business combination of RehabCare and Kindred could provide, including cost and revenue related synergies and the related potential benefits to stockholders, employees, patients and other important constituents of both companies. Kindred submitted a preliminary indication of interest to acquire RehabCare at a price of $25.00 per share, with half payable in cash and the other half in Kindred common stock. Following such indication, the parties were unable to agree on a mutually acceptable valuation for RehabCare, and those discussions were discontinued.

During the spring and summer of 2010, RehabCare s stock price dropped significantly, which management believed was caused by the general uncertainty surrounding healthcare reform. RehabCare s board of directors and management believed that the uncertainties that RehabCare was facing could limit its ability to grow, including by limiting its ability to finance large transactions which otherwise might be desirable for RehabCare s growth. Consequently, as part of its normal evaluation of strategic alternatives, the RehabCare board of directors requested that CGMI attend the regularly scheduled meeting of the RehabCare board of directors on August 2 and August 3, 2010 to discuss potential strategic alternatives for RehabCare.

The RehabCare board of directors held a regularly scheduled meeting on August 2 and August 3, 2010 and a special meeting on August 18, 2010. As part of those meetings, CGMI provided a general overview of various strategic alternatives, including analyzing various standalone alternatives, potential acquisition targets, and potential financial and strategic partners. The RehabCare board of directors discussed with management and CGMI the risks and benefits of pursuing those strategic alternatives, including the execution risks associated with pursuing the standalone alternatives and potential acquisitions, and the confidentiality risks associated with commencing a process to gauge interest in the acquisition of RehabCare. The RehabCare board of directors reviewed several healthcare companies and financial sponsors to determine if any of them would be likely partners for a business combination. With input from CGMI and RehabCare management, the RehabCare board of directors concluded that, other than Kindred, there were no logical strategic acquirors of RehabCare at that time. In reaching such conclusion, the RehabCare board of directors, with input from CGMI and RehabCare management, discussed four other logical potential strategic acquirors of RehabCare and the various reasons that each such third party would not be a likely acquiror, which, included, among others, public statements, prior business contacts, leverage constraints, recent significant acquisitions, and various regulatory and legal matters with respect to such third parties. While the RehabCare board of directors believed that Kindred could be a potential strategic acquiror, the board was skeptical of Kindred s ability and willingness to complete an acquisition of RehabCare at an acceptable price, based in large part on the parties prior discussions with respect to a potential transaction. At the conclusion of the August 18, 2010 meeting, the RehabCare board of directors engaged CGMI to contact certain financial sponsors to determine interest in a potential acquisition of RehabCare. Based on the RehabCare board of directors analysis, after consultation with RehabCare management and CGMI, of the potential strategic partners and their respective ability and anticipated interest in pursuing a strategic combination, as well as concerns regarding sharing sensitive information with competitors, CGMI was directed by the RehabCare board of directors not to contact potential strategic acquirors at such time.

On September 27, 2010, RehabCare entered into a formal engagement letter with CGMI to serve as its financial advisor in connection with a possible strategic transaction, which provided, among other things, that the Company will not unreasonably withhold a waiver of any potential conflict of interest that may arise with respect thereto following receipt of notice and disclosure of such conflict of interest by Citi. The Company hereby consents to participation by Citi or any of its affiliates in providing or arranging, or seeking to provide or arrange, such financing, it being understood that Citi will maintain proper information barriers and other procedures in accordance with firm policies and practices to avoid unauthorized disclosure of confidential information regarding the Company to any potential bidder. .

As directed by the RehabCare board of directors, beginning on October 1, 2010, CGMI contacted nine financial sponsors to evaluate potential interest in the acquisition of RehabCare. These financial sponsors were selected based on their experience in the healthcare industry and their ability to finance a transaction of this size. Eight of the nine financial sponsors contacted by CGMI executed confidentiality agreements with RehabCare, and CGMI, as directed by the RehabCare board of directors, thereafter delivered additional information regarding RehabCare to those parties, including RehabCare management s financial model, a business overview and a preliminary financing analysis performed by CGMI. Management presentations were made to five of those financial sponsors, including Party A and Party B. The eight financial sponsors entered into standstill agreements, which by their terms, prohibited, among other things, an unsolicited offer for RehabCare.

Throughout 2010, as part of CGMI s regular client coverage of Kindred, CGMI regularly communicated and met with Kindred senior management to discuss various potential transactions and various potential acquisition candidates, including RehabCare. As part of these conversations, CGMI or its affiliates discussed providing acquisition financing to Kindred.

On October 7, 2010, Paul Diaz, Kindred s President and Chief Executive Officer, met with representatives of CGMI, as part of this regular client coverage, to review an analysis of potential targets, including RehabCare and other potential targets, for Kindred s consideration of possible strategic alternatives. Mr. Diaz subsequently asked CGMI to prepare an analysis of a possible combination of Kindred and RehabCare for consideration by the Kindred board of directors. CGMI asked for RehabCare s permission to prepare such analysis, noting that Kindred had actively considered the combination of RehabCare and Kindred as a strategic alternative for several years. After receiving permission from Dr. John Short, President and Chief Executive Officer of RehabCare and a member of RehabCare s board of directors, CGMI prepared an analysis based on publicly available information with respect to RehabCare, including an accretion/dilution analysis of a possible combination at purchase prices ranging from $30.00 to $35.00 per share of RehabCare common stock. Mr. Diaz included this analysis in written materials provided to the Kindred board of directors, which discussed a possible combination with RehabCare at its regularly scheduled October 27 and 28, 2010 meeting, which CGMI did not attend. During this period, CGMI also indicated to Mr. Diaz that it had been engaged by the RehabCare board of directors to advise it in connection with strategic alternatives.

On October 28, 2010, Mr. Diaz contacted CGMI to express the Kindred board of directors interest in exploring a combination with RehabCare and to inquire about appropriate next steps. CGMI reminded Mr. Diaz that it would not be able to represent Kindred in connection with a possible transaction with RehabCare, but that it would inform RehabCare of Kindred s interest. Following discussions with Dr. Short, CGMI indicated to Mr. Diaz that he should contact Dr. Short directly to communicate Kindred s desire to explore a potential transaction.

On October 29, 2010, Party A submitted a preliminary indication of interest to acquire RehabCare at a price ranging from $25.00 to $27.00 per share. On November 1, 2010, Party B submitted its preliminary indication of interest to acquire RehabCare at a price ranging from $27.00 to $30.00 per share. The other seven financial sponsors did not submit indications of interest and withdrew from the process.

On November 2, 2010, the RehabCare board of directors held a regularly scheduled meeting. At this meeting, CGMI updated the RehabCare board of directors on the status of the process with the financial sponsors, including the details of the indications of interest delivered by Party A and Party B. CGMI also discussed its contact with

Mr. Diaz and Kindred s interest in pursuing a possible combination, and provided the RehabCare board of directors with preliminary pro forma financial analysis of the two companies on a combined basis, using publicly available information with respect to Kindred. The RehabCare board of directors discussed in detail the proposals received from Party A and Party B. Based in part on the input of management and CGMI, the RehabCare board of directors determined that these proposals did not provide adequate value to the RehabCare stockholders and would not be pursued further at such time, and that Party A and Party B were unlikely to make offers that the RehabCare board of directors would ultimately find acceptable. The RehabCare board of directors further discussed the contact from Kindred and the advantages and disadvantages of pursuing a transaction with Kindred. The RehabCare board of directors engaged in a preliminary discussion of the benefits of a transaction with Kindred, including the potential that such a combination would present compelling synergies, but also considered the parties prior failed discussions. The RehabCare board of directors also discussed various other strategic alternatives, including the potential benefits and the execution risks of continuing as a stand alone entity and implementing its current strategic plans. The RehabCare board of directors tabled further discussion of pursuing a transaction with Kindred pending further contact from Kindred.

On November 4, 2010, Mr. Diaz called Dr. Short to inform him of Kindred s renewed interest in acquiring RehabCare. Mr. Diaz verbally expressed to Dr. Short that Kindred would be interested in pursuing an all cash acquisition of RehabCare, at a price ranging from $32.00 to $34.00 per share.

The RehabCare board of directors was informed of the verbal expression of interest made by Kindred during a special meeting held on November 13, 2010. After consideration of Kindred s proposal, the RehabCare board of directors determined to engage in further discussions with Kindred to explore a potential transaction, established a special committee of the RehabCare board of directors (whom we refer to as the RehabCare special committee), consisting of Harry Rich, Anthony Piszel and Theodore Wight, to supervise the process and any negotiations, and authorized the RehabCare special committee to retain legal counsel to represent the RehabCare board of directors in connection with consideration of a potential transaction. The RehabCare board of directors selected Messrs. Rich, Piszel and Wight, each of whom are independent directors, to serve as members of the RehabCare special committee based on their collective financial expertise, experience in negotiating complex business transactions, and industry knowledge. In addition, the RehabCare board of directors asked CGMI to prepare, and review with its internal credit committee, an analysis of the ability to finance an acquisition in the proposed range of prices.

On or about November 16, 2010, Dr. Short contacted Mr. Diaz and informed him that the RehabCare board of directors had determined to pursue discussions regarding a potential transaction. Dr. Short conveyed to Mr. Diaz that three threshold issues to be addressed were the commitment of the Kindred board of directors to the proposed transaction, Kindred s ability to finance the transaction, and the need to achieve a price for RehabCare stockholders above the $32.00 to $34.00 per share range. Concurrently, CGMI informed Kindred that its internal credit committee would be analyzing the financeability of the acquisition based on Kindred s proposed range of prices at the request of the RehabCare board of directors. The RehabCare board of directors believed such analysis by CGMI would assist the board in its negotiations with Kindred, as well as in the board s analysis of the likelihood that the financing necessary for the merger would be completed.

On or about November 18, 2010, CGMI internally contemplated the possibility of providing financing to Kindred if invited to do so, and provided with advance consent by the RehabCare board of directors. CGMI did not have any interaction with Kindred concerning CGMI s internal contemplation of providing financing prior to December 16, 2010.

On November 27, 2010, RehabCare and Kindred entered into a mutual confidentiality agreement that contained reciprocal standstill obligations of the parties. RehabCare began preparation of a data room containing due diligence materials for Kindred s review.

Dr. Short and Mr. Diaz met on November 29, 2010 in Washington, D.C. at an industry meeting of the American Hospital Association and discussed the key topics to be addressed at an upcoming meeting of representatives of their respective boards of directors. Dr. Short and Mr. Diaz also discussed potential accretion and synergies if a business combination were to occur.

At a November 30, 2010 meeting of the RehabCare special committee, CGMI presented its analysis of Kindred s ability to finance an acquisition of RehabCare at various prices. Based on this preliminary assessment, CGMI believed Kindred would likely need to include an equity component as part of the transaction consideration if it was to enter into a transaction at a price at or above its initial range.

On December 2, 2010, the members of the RehabCare special committee and Dr. Short met with Edward L. Kuntz, chairman of the Kindred board of directors, Dr. Thomas Cooper, Kindred s lead independent director, and Mr. Diaz to discuss the terms of a potential transaction. Among the topics discussed were transaction value, the availability of financing for the transaction, and RehabCare s request for a go shop feature to be included in any formal proposal to be made by Kindred. In addition, in light of the previous, failed discussions between the parties regarding a business combination, the RehabCare special committee sought assurances that the full Kindred board of directors supported the proposed transaction.

The RehabCare special committee held meetings on December 7, 2010 and December 10, 2010, with Bryan Cave LLP (whom we refer to as Bryan Cave), counsel to the RehabCare board of directors. During these meetings, Bryan Cave reviewed and discussed with the RehabCare special committee the terms of the proposed merger agreement to be provided to Kindred, and a potential timeline for the transaction. The draft merger agreement was delivered to Morgan Stanley, financial advisor to Kindred, following the RehabCare special committee meeting on December 10, 2010.

On December 12, 2010, Mr. Diaz and Dr. Short had a call to continue their discussions on the potential transaction and to discuss an agenda for the meeting between the Kindred and RehabCare management teams. Mr. Diaz updated the Kindred board of directors on the status of the discussions at the regularly scheduled Kindred board of directors meeting on December 15 and 16, 2010. On December 16, 2010, members of Kindred s management team, including representatives from Morgan Stanley, met with representatives of RehabCare s management team, including representatives from CGMI, to discuss RehabCare s businesses and operations and the potential synergies from a combination of the companies.

On or about December 16, 2010, Kindred asked each of JPMorgan, Morgan Stanley and CGMI to independently develop and submit a proposal for the potential financing of a transaction. Kindred, with a market capitalization at the time of under $700 million, believed that these were the three banks most familiar with its operations and credit profile and therefore would be the banks that would be able to provide financing commitments that would be most favorable to Kindred, from perspectives of conditionality and pricing, as well as from the perspective of the speed with which they could make decisions relating to financing commitments to Kindred. In particular, Kindred took into account the roles, under Kindred s credit facility, of JPMorgan, as bookrunner, lead arranger and a lender, and of an affiliate of CGMI, as syndication agent and a lender.

Upon receipt of Kindred s invitation in December to submit a proposal for the potential financing of a transaction, CGMI informed Mr. Rich and Dr. Short of Kindred s request, and discussed the internal procedures that CGMI and its affiliates intended to put in place in the event RehabCare consented to CGMI s or its affiliates potential participation in the financing. These procedures would include having separate teams of representatives participate in each part of the transaction, and a requirement that RehabCare would engage a separate financial advisor to analyze the proposed transaction from a financial point of view for the RehabCare board of directors and, if appropriate, deliver an opinion to the RehabCare board of directors. Moreover, CGMI agreed that it would reduce its fees in connection with the fees that would be paid for the second financial advisor and that CGMI and its affiliates would neither lead Kindred s financing syndicate nor provide more than 50% of the total amount financed.

At meetings of the RehabCare special committee held on December 17, 2010 and December 23, 2010, Bryan Cave updated the RehabCare special committee on recent conversations with Cleary Gottlieb Steen & Hamilton LLP (whom we refer to as Cleary Gottlieb), legal counsel to Kindred, regarding process, timing and potential transaction structure. In addition, Mr. Rich advised the RehabCare special committee that the leveraged finance group of CGMI had been invited to submit a proposal to Kindred to participate in the financing syndication for the proposed transaction, and described the internal procedures CGMI had informed him would be put in place at CGMI and its affiliates regarding the potential dual roles in the transaction. The RehabCare special committee discussed the desirability of permitting CGMI s leveraged finance group to participate in Kindred s financing syndicate to enhance the certainty of Kindred s ability to finance the transaction, and discussed with Bryan Cave the need to engage an additional financial advisor to the RehabCare board of directors in the event CGMI and its affiliates participated in Kindred s financing syndicate. The RehabCare special committee concluded that CGMI s participation in the financing syndicate could enhance the certainty of Kindred s ability to finance the transaction and increase competition among lenders, which could lead to Kindred securing more favorable financing terms. The RehabCare special committee determined that RehabCare stockholders would benefit from any such increased certainty and accordingly concluded that, if acceptable deal terms were reached with Kindred, and CGMI was invited to participate in Kindred s financing syndicate, the RehabCare board of directors would likely consent to CGMI s and its affiliates participation in Kindred s financing syndicate subject to the conditions previously discussed and subject to the requirement that the fees and expenses of the second financial advisor be fully credited against the amount RehabCare had previously agreed to pay CGMI for its financial advisory services. The RehabCare special committee directed Mr. Rich to contact certain parties to discuss potential engagement to evaluate the fairness of the proposed transaction from a financial point of view, and to confirm to CGMI that it and its affiliates were authorized to submit a proposal to Kindred, subject to the conditions discussed.

Throughout December 2010, Kindred continued its due diligence review of RehabCare and participated in various diligence meetings and telephone conferences with RehabCare management. Subsequent to the December invitation to JPMorgan, Morgan Stanley and CGMI to submit proposals to finance the transaction, senior management of Kindred engaged in regular communications with these prospective sources of debt financing, RehabCare and RehabCare s advisors regarding the proposed acquisition financing.

On December 28, 2010, Kindred delivered a written proposal to RehabCare, which proposal was for a price of $32.00 per share, payable $27.00 in cash and $5.00 in Kindred common stock. Kindred s proposal included indicative terms of the debt financing commitments it expected to receive, and provided a summary of key issues identified in the draft merger agreement previously provided by RehabCare, including Kindred s requirement that the closing of the transaction be conditioned on its receipt of financing and that the go shop provision proposed by RehabCare be replaced with a window shop provision.

During a regular meeting of the RehabCare board of directors held on December 29, 2010, the RehabCare board of directors reviewed the proposal delivered by Kindred. Bryan Cave also reviewed with the RehabCare board of directors the legal duties applicable to its consideration of a potential transaction. During the meeting, CGMI reviewed with the RehabCare board of directors certain financial items relating to Kindred s proposal, and Bryan Cave reviewed various legal aspects. CGMI also described to the RehabCare board of directors its preliminary analysis of the indicative financing terms included in Kindred s proposal and confirmed CGMI s belief that at or above the price proposed by Kindred, Kindred would need to complete an equity offering before closing or include stock as a part of the consideration. The RehabCare board of directors discussed its disappointment over the price per share and other aspects of Kindred s proposal. After extensive discussion of the offer and the stand alone prospects of RehabCare, the RehabCare board of directors determined that it would not accept Kindred s offer. Dr. Short also presented an alternative transaction to the RehabCare board of directors to be considered in the event that Kindred was not able to improve its offer to a level acceptable to the RehabCare board of directors, pursuant to which RehabCare would offer to acquire Kindred. After continuing discussions regarding the advantages and disadvantages of a potential transaction with Kindred and the proposed alternative transaction, the RehabCare board of directors instructed Dr. Short to contact Mr. Diaz to determine if Kindred would be willing to increase its offer to a level that the RehabCare board of directors might find attractive, and to express RehabCare s willingness to alternatively explore an acquisition of Kindred. In addition, the RehabCare board of directors, along with Bryan Cave, discussed Kindred s invitation to CGMI s leveraged finance group to submit a proposal to participate in Kindred s financing syndicate and the desirability of permitting CGMI s leveraged finance group to participate in such financing, if chosen by Kindred to do so, in order to enhance the certainty of Kindred s ability to finance the transaction. After this discussion, the RehabCare board of directors acknowledged that, subject to satisfaction of the conditions the RehabCare special committee had previously discussed with CGMI, and pursuant to the terms of the engagement letter with CGMI, it would consent to CGMI s leveraged finance group participating in Kindred s financing syndicate if it were invited to do so.

Dr. Short contacted Mr. Diaz and informed him that the proposal delivered by Kindred on December 28, 2010 was viewed as inadequate and was not supported by the RehabCare board of directors. Dr. Short communicated to Mr. Diaz that the RehabCare board of directors would be willing to continue discussions with Kindred regarding a potential transaction at a price of $35.50 per share or greater, as well as RehabCare s willingness to explore the alternative structure if Kindred was unable to improve the terms of its offer. RehabCare delivered a letter to Kindred on December 31, 2010 reflecting the principal elements of the conversation between Dr. Short and Mr. Diaz on December 28, 2010, as well as providing RehabCare s response to the key issues in the merger agreement identified by Kindred in its December 28, 2010 proposal.

During the week of January 3, 2011, representatives of RehabCare and Kindred continued to communicate regarding terms of a potential transaction. Given the proposed equity component of the merger consideration, they also discussed whether Kindred would consider providing an appropriate level of representation from the current RehabCare board of directors on the post-transaction Kindred board of directors. In addition, Kindred continued its due diligence process.

On January 7, 2011, Kindred delivered a revised proposal to RehabCare, increasing its offer price to $35.00 per share, with $26.00 payable in cash and $9.00 payable in Kindred common stock. Kindred noted that its ongoing discussions with JPMorgan, Morgan Stanley and CGMI regarding acquisition financing reaffirmed its confidence that it would obtain a firm commitment on financing in the next few weeks. In addition, the revised proposal provided an updated transaction timeline, an outline of certain terms that Kindred would be including in its markup of the merger agreement, and a description of open due diligence items.

At meetings of the RehabCare special committee held on January 9 and January 10, 2011, CGMI and Bryan Cave discussed the terms of Kindred s revised proposal with the RehabCare special committee and Dr. Short. CGMI noted that the increased stock portion of the consideration proposed by Kindred would obviate the need for Kindred to undertake an equity offering between signing and closing the proposed transaction and would assist in the certainty of Kindred obtaining financing for the transaction. CGMI also described the fixed exchange ratio structure proposed by Kindred relating to the stock component, and discussed other potential alternative structures for the stock portion of the proposal that could be considered, including a fixed exchange ratio with a collar and fixed value with a collar. The RehabCare special committee considered the accretive nature of the transaction on Kindred common stock, which provided an opportunity for even further value to the RehabCare stockholders from the consideration proposed by Kindred in the event that a fixed exchange ratio was used. Bryan Cave described various other aspects of the revised offer, including Kindred s proposed reverse termination fee structure related to its financing, the need for Kindred stockholder approval due to the stock component of the transaction consideration, and Kindred s refusal to allow for a go shop period following the execution of the merger agreement in light of the substantial premium it was offering. The RehabCare special committee discussed the appropriateness of requesting two seats on the Kindred board of directors upon completion of the transaction, given the substantial amount of Kindred common stock that RehabCare stockholders would receive under Kindred s proposal. The RehabCare special committee also discussed the need to undertake a due diligence review of Kindred in light of the amount of Kindred common stock that would be delivered to RehabCare stockholders. The RehabCare special committee discussed the advantages and disadvantages of moving forward with a transaction on the terms contained in Kindred s revised proposal. Based on the foregoing, the RehabCare special committee determined the revised offer price, including the mix of cash and stock consideration, to be adequate to continue discussions with Kindred and, after consultation with CGMI and Bryan Cave, developed a response to Kindred s revised proposal, and directed Dr. Short to present that response to Mr. Diaz.

On January 11, 2011, Dr. Short and Mr. Diaz met at an industry conference in San Francisco, California. Dr. Short informed Mr. Diaz that the RehabCare special committee had determined that Kindred s revised offer price was adequate to continue discussions. Dr. Short and Mr. Diaz then discussed the remaining key issues in Kindred s revised proposal. Mr. Diaz indicated that Kindred would respond shortly with a revised draft of the merger agreement, which would reflect his discussion with Dr. Short.

Beginning January 11, 2011, RehabCare began contacting additional financial advisors with respect to a potential engagement to evaluate the fairness of the proposed consideration to be received by RehabCare stockholders from a financial point of view and to deliver a fairness opinion if appropriate.

Cleary Gottlieb delivered a revised draft of the merger agreement to Bryan Cave on January 13, 2011. Between January 13 and January 17, 2011, the RehabCare special committee of the RehabCare board of directors, in consultation with CGMI and Bryan Cave, continued to evaluate a transaction based on the terms proposed by Kindred in its revised merger agreement. During this period CGMI was informed that RBC had been selected as a second financial advisor to RehabCare and its board of directors, and CGMI agreed to reduce the fee it was to receive for its financial advisory services by the full amount of the fees and expenses that would be paid to RBC for its services. RehabCare selected RBC to act as its additional financial advisor based on RBC s qualifications, expertise and reputation and its knowledge of the business and affairs of RehabCare. RehabCare also confirmed that RBC was not conflicted in the transaction, including confirmation that it was not participating in Kindred s financing syndicate.

On January 17, 2011, Dr. Short and Mr. Diaz met in New York and discussed certain of the key open issues in the revised draft of the merger agreement provided by Kindred. Bryan Cave delivered a revised draft of the merger agreement to Cleary Gottlieb on January 20, 2011.

From January 20 through January 26, 2011, the parties and their respective advisors continued to engage in negotiations regarding the terms of the proposed transaction.

During January, RehabCare management and outside accounting and legal advisors conducted a due diligence review regarding Kindred. No material issues regarding Kindred were identified.

On or about January 24, 2011, Kindred selected JPMorgan to be the lead lender in the provision of debt financing commitments in connection with the proposed transaction. In addition, Kindred selected the leveraged finance groups at Morgan Stanley and CGMI, respectively, to provide financing commitments in connection with the proposed transaction. At this time, RehabCare confirmed its consent to allow CGMI s leveraged finance group to provide this financing commitment to Kindred.

On January 24, 2011, RBC was engaged by the RehabCare board of directors to evaluate the fairness of the proposed consideration to be received by RehabCare stockholders from a financial point of view.

Following receipt of a list of principal open issues delivered by Kindred on January 26, 2011, members of RehabCare s senior management, together with Bryan Cave and CGMI, participated in a conference call with members of Kindred s senior management, Cleary Gottlieb and Morgan Stanley to discuss those open issues. The parties resolved certain of the issues on that call, and instructed Bryan Cave and Cleary Gottlieb to continue negotiating the remaining open terms of the merger agreement. Cleary Gottlieb delivered a revised draft of the merger agreement on January 28, 2011 and an initial draft of the debt commitment letter on January 29, 2011.

At meetings of the RehabCare special committee held on February 1 and February 2, 2011, Dr. Short, Bryan Cave and CGMI updated the RehabCare special committee on the status of the ongoing negotiations with Kindred. The RehabCare special committee also reviewed the reverse due diligence regarding Kindred performed by its legal and financial advisors. The RehabCare special committee reviewed and discussed the current draft of the merger agreement and Kindred s debt financing commitment, and the remaining open issues. The RehabCare special committee then directed Dr. Short, together with Bryan Cave and CGMI, to continue negotiations with Kindred.

From February 1 through February 6, 2011, RehabCare s senior management and legal and financial advisors continued to negotiate with Kindred s senior management and its legal and financial advisors to finalize the terms of the proposed transaction, including exchanging several drafts of the merger agreement and debt commitment letters.

On February 3, 2011, representatives of CGMI discussed internally that certain risks facing RehabCare could materialize in the future and that the financial projections prepared by the RehabCare management, hereinafter referred to as Case A, did not fully account for such risks. On that date, CGMI also discussed with RBC the possible inclusion of a Case B scenario, which would reflect a less favorable reimbursement environment and lower volume growth, in its and RBC s respective analyses. CGMI decided to discuss such matters with RehabCare management.

On February 3, 2011, representatives of CGMI contacted RehabCare management, and discussed whether the Case A financial projections fully accounted for the potential reimbursement and other business risks facing RehabCare in the future. Following such discussion, RehabCare management identified and quantified assumptions that took into account such risks, and these assumptions formed the basis for Case B financial projections. On February 4, 2011, the Case B financial projections were shared by RehabCare s management with RBC. CGMI and RBC have included Case A and Case B in their analyses of the fairness of the proposed transaction.

On February 6, 2011, Kindred held a special meeting of its board of directors at which the Kindred board of directors reviewed and discussed the proposed transaction with RehabCare. Kindred s management, Cleary Gottlieb and Morgan Stanley participated in the meeting. The Kindred board of directors discussed with management, Cleary Gottlieb and Morgan Stanley the proposed terms of the merger agreement, as well as the proposed terms of the debt commitment letters, both of which had been provided to the Kindred board of directors prior to the meeting. Morgan Stanley reviewed with the Kindred board of directors a presentation setting forth its financial analysis of the proposed transaction and rendered its oral opinion, which was confirmed in writing on February 7, 2011, to the Kindred board of directors that, as of that date, and based upon and subject to the assumptions made, matters considered and qualifications and limitation on the scope of review undertaken by Morgan Stanley, the merger consideration was fair from a financial point of view to Kindred as discussed in the section entitled Opinion of Kindred s Financial Advisor beginning on page 49 (such opinion is attached hereto as Annex D). Following review of such presentation, and further discussion among Kindred s board of directors and management, the Kindred board of directors voted unanimously to approve the merger, the merger agreement and the transactions contemplated by the merger agreement.

On February 7, 2011, RehabCare held a regularly scheduled meeting of its board of directors at which, in consultation with Bryan Cave, CGMI and RBC, the RehabCare board of directors reviewed and discussed the final terms and conditions of the merger agreement and debt commitment letters. Bryan Cave reviewed with the RehabCare board of directors the terms and conditions contained in the merger agreement which had been provided to the directors prior to the meeting. CGMI and Bryan Cave also reviewed the debt commitment letters being obtained by Kindred. CGMI and RBC separately presented financial analyses of the proposed transaction, and each delivered its oral opinion to the RehabCare board of directors, which opinions were confirmed by delivery of written opinions dated February 7, 2011, to the effect that, as of such date and based upon and subject to the factors, assumptions and limitations set forth therein, the merger consideration to be received by RehabCare stockholders was fair, from a financial point of view, to holders of RehabCare common stock (other than shares of RehabCare common stock owned by RehabCare, Kindred or their wholly owned subsidiaries, or as to which dissenters rights are perfected) as discussed in the sections entitled Opinion of RehabCare s Financial Advisor CGMI beginning on page 55 (such opinion is attached hereto as Annex B) and Opinion of RehabCare s Financial Advisor RBC beginning on page 62 (such opinion is attached hereto as Annex C). Following further review and discussion among the members of the RehabCare board of directors, including consideration of the factors described under RehabCare s Reasons for the Merger and Recommendation of RehabCare s Board of Directors beginning on page 45, the RehabCare board of directors determined that the merger, the merger agreement and the transactions contemplated by the merger agreement were advisable and fair to and in the best interests of RehabCare and its stockholders, and the RehabCare board of directors voted unanimously to approve the merger, the merger agreement and the transactions contemplated by the merger agreement.

The merger agreement was executed by RehabCare and Kindred on February 7, 2011. On February 8, 2011, prior to the commencement of trading on the NYSE, RehabCare and Kindred issued a joint press release announcing the signing of the merger agreement.

The Merger Opinion of RehabCare s Financial Advisor CGMI Valuation Analyses of RehabCare Selected Company Trading Analysis

This disclosure supplements the discussion at page 59 of the joint proxy statement/prospectus under this subheading by deleting the first sentence of the first paragraph on this page and replacing it with the following:

CGMI reviewed financial and stock market information and public market trading multiples of RehabCare and the following five selected publicly held healthcare companies which, like RehabCare, are each leading facility-based, post-acute healthcare service providers:

The Merger Opinion of RehabCare s Financial Advisor CGMI Valuation Analyses of RehabCare Selected Company Trading Analysis

This disclosure further supplements the discussion at page 59 of the joint proxy statement/prospectus under this subheading by deleting the third sentence of the first paragraph under this subheading and replacing it with the following:

Financial data for the selected companies, including 2011 estimated EBITDAR, were based on information available from FactSet and public filings. Financial data for RehabCare, including 2011 estimated EBITDAR, were based both on RehabCare management s estimates and publicly available research analysts estimates relating to RehabCare, referred to as RehabCare consensus estimates.

The Merger Opinion of RehabCare s Financial Advisor CGMI Valuation Analyses of RehabCare Precedent Transaction Multiples

This disclosure supplements the discussion at page 59 of the joint proxy statement/prospectus under this subheading by deleting the second sentence under this subheading and replacing it with the following:

These transactions were selected based on CGMI s belief that they were generally comparable to the proposed transaction because, as is the case with this transaction, they involved the acquisition of healthcare companies each of which are leading LTAC-based, post-acute service providers with transaction values in excess of $200,000,000, announced since January 1, 2005.

The Merger Opinion of RehabCare s Financial Advisor CGMI Valuation Analyses of RehabCare Precedent Transaction Multiples

This disclosure further supplements the discussion at page 59 of the joint proxy statement/prospectus under this subheading by deleting the table under the first paragraph under this subheading and replacing it with the following:

Announcement Date	Acquiror	Target	EBITDA Multiple	Transaction Value
August 24, 2010	Kindred	Vista Healthcare, LLC (5 hospitals)	6.7x	$ 200,000,000
June 21, 2010	Select Medical Holdings Corporation	Regency Hospital Company, L.L.C.	7.6x	$ 200,000,000
November 3, 2009	RehabCare	Triumph Healthcare LLC	6.4x	$ 600,000,000
July 21, 2005	The Carlyle Group	LifeCare Holdings, Inc.	6.8x	$ 500,000,000

The Merger Opinion of RehabCare s Financial Advisor CGMI Valuation Analyses of RehabCare Discounted Cash Flow Analysis

This disclosure supplements the discussion at page 60 of the joint proxy statement/prospectus under this subheading by deleting the first paragraph on this page and replacing it with the following:

Discounted Cash Flow Analysis. CGMI performed an illustrative discounted cash flow analysis to calculate the estimated present value of the standalone unlevered, after-tax free cash flow that RehabCare could generate for calendar year 2011 through calendar year 2020. The analysis was conducted on both RehabCare s Case A and Case B projections. CGMI calculated terminal values for RehabCare by applying to RehabCare s fiscal year 2020 estimated free cash flows a range of perpetuity growth rates of 1.75% to 2.25%, which range of growth rates was selected by CGMI utilizing its professional judgment and experience, taking into consideration long-term growth expectations for the industry, including population growth. CGMI then discounted these cash flows and terminal values to illustrative present values using a range of discount rates from 9.8% to 11.4%, which were derived by utilizing a weighted average cost of capital analysis based on the capital asset pricing model and taking into account certain financial metrics for RehabCare and for the United States equity markets generally. The applied discount rates ranging from 9.8% to 11.4% were based upon CGMI s judgment of an illustrative range based upon the above analysis. Based on this analysis, CGMI calculated the following implied per share equity reference ranges for RehabCare common stock, shown as compared to the implied merger consideration:

The Merger Opinion of RehabCare s Financial Advisor CGMI Miscellaneous

This disclosure supplements the discussion at page 62 of the joint proxy statement/prospectus under this subheading by deleting the second sentence of the first paragraph under this subheading and replacing it with the following:

CGMI agreed to reduce its aggregate fees by $250,000 the amount of fees that would be payable by RehabCare to RBC in connection with the delivery of a fairness opinion by RBC.

This disclosure further supplements the discussion at page 62 of the joint proxy statement/prospectus under this subheading by inserting the following sentence after the first sentence of the third paragraph:

Since January 1, 2009, other than any fees they will receive in connection with the proposed transaction (as described above), Citi and its affiliates, other than its retail banking affiliates, have received approximately $1,436,000, in the aggregate, in compensation for work performed for Kindred and no such compensation from RehabCare.

The Merger Opinion of RehabCare s Financial Advisor RBC RehabCare Financial Analysis RehabCare Comparable Companies Analysis

This disclosure supplements the discussion at page 65 of the joint proxy statement/prospectus by deleting the second sentence of the first paragraph under this subheading and replacing it with the following:

The peer group to which RehabCare was compared consisted of the following U.S. publicly traded rehabilitation care services, senior nursing facilities services and long-term acute care hospital companies:

The Merger Opinion of RehabCare s Financial Advisor RBC RehabCare Financial Analysis RehabCare Comparable Transaction Analysis

This disclosure supplements the discussion at page 68 of the joint proxy statement/prospectus under this subheading concerning the premiums associated with each transaction in RBC s RehabCare comparable transaction analysis by deleting the first sentence of the first paragraph under this subheading and replacing it with the following:

RBC reviewed selected financial information for the following selected, publicly announced rehabilitation care services, senior nursing facilities services and long-term acute care hospital transactions which were completed since January 1, 2005:

The Merger Opinion of RehabCare s Financial Advisor RBC RehabCare Financial Analysis RehabCare Discounted Cash Flow Analysis

This disclosure supplements the discussion at page 68 of the joint proxy statement/prospectus under this subheading by inserting the following after the third sentence in the second paragraph under this subheading:

The range of perpetual growth rates was selected after taking into account RehabCare management s projected growth rate for RehabCare in the latter years of the projection period.

Additional Information About this Transaction

In connection with the pending transaction with RehabCare Group, Inc. (RehabCare), Kindred Healthcare, Inc. (Kindred) has filed with the Securities and Exchange Commission (the SEC) a Registration Statement on Form S-4 (commission file number 333-173050) that includes a joint proxy statement of Kindred and RehabCare that also constitutes a prospectus of Kindred. The registration statement was declared effective by the SEC on April 26, 2011. Kindred and RehabCare mailed the definitive joint proxy statement/prospectus to their respective stockholders on or about April 28, 2011. **WE URGE INVESTORS AND SECURITY HOLDERS TO READ THE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE PENDING TRANSACTION BECAUSE IT CONTAINS IMPORTANT INFORMATION**. You may obtain a free copy of the joint proxy statement/prospectus and other related documents filed by Kindred and RehabCare with the SEC at the SEC s website at www.sec.gov. The joint proxy statement/prospectus and the other documents filed by Kindred and RehabCare with the SEC may also be obtained for free by accessing Kindred s website at www.kindredhealthcare.com and clicking on the Investors link and then clicking on the link for SEC Filings or by accessing RehabCare s website at www.RehabCare.com and clicking on the Investor Information link and then clicking on the link for SEC Filings .

Participants in this Transaction

Kindred, RehabCare and their respective directors, executive officers and certain other members of management and employees may be soliciting proxies from their respective stockholders in favor of the pending transaction. You can find information about Kindred s executive officers and directors in the joint proxy statement/prospectus. You can find information about RehabCare s executive officers and directors in its amended Form 10-K filed with the SEC on April 28, 2011. You can obtain a free copy of these documents from Kindred or RehabCare, respectively, using the contact information above.

Forward-Looking Statements

Information set forth herein contains forward-looking statements, which involve a number of risks and uncertainties. Kindred and RehabCare caution readers that any forward-looking information is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking information. Such forward-looking statements include, but are not limited to, statements about the benefits of the business combination transaction involving Kindred and RehabCare, including future financial and operating results, the combined company s plans, objectives, expectations and intentions and other statements that are not historical facts.

The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: (a) the receipt of all required licensure and regulatory approvals and the satisfaction of the closing conditions to the acquisition of RehabCare by Kindred, including approval of the pending transaction by the shareholders of the respective companies, and Kindred s ability to complete the required financing as contemplated by the financing commitment; (b) Kindred s ability to integrate the operations of the acquired hospitals and rehabilitation services operations and realize the anticipated revenues, economies of scale, cost synergies and productivity gains in connection with the RehabCare acquisition and any other acquisitions that may be undertaken during 2011, as and when planned, including the potential for unanticipated issues, expenses and liabilities associated with those acquisitions and the risk that RehabCare fails to meet its expected financial and operating targets; (c) the potential for diversion of management time and resources in seeking to complete the RehabCare acquisition and integrate its operations; (d) the potential failure to retain key employees of RehabCare; (e) the impact of Kindred s significantly increased levels of indebtedness as a result of the RehabCare acquisition on Kindred s funding costs, operating flexibility and ability to fund ongoing operations with additional borrowings, particularly in light of ongoing volatility in the credit and capital markets; (f) the potential for dilution to Kindred s stockholders as a result of the RehabCare acquisition; and (g) the ability of Kindred to operate pursuant to the terms of its debt obligations, including Kindred s obligations under financings undertaken to complete the RehabCare acquisition, and the ability of Kindred to operate pursuant to its master lease agreements with Ventas, Inc. (NYSE:VTR). Additional factors that may affect future results are contained in Kindred s and RehabCare s filings with the SEC, which are available at the SEC s web site at www.sec.gov. Many of these factors are beyond the control of Kindred or RehabCare. Kindred and RehabCare disclaim any obligation to update and revise statements contained in these materials based on new information or otherwise.

SIGNATURES

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 hereto duly authorized.

Date: May 12, 2011	By: /s/ Joseph L. Landenwich Joseph L. Landenwich Senior Vice President, Corporate Legal Affairs and Corporate Secretary

Item 9.01.

(d) Exhibits
Exhibit 2.1 Amendment to Agreement and Plan of Merger, dated May 12, 2011, among Kindred Healthcare, Inc., Kindred Healthcare Development, Inc. and RehabCare Group, Inc.

84121, or by e-mail, sent to *boardofdirectors@overstock.com*. All communications from stockholders regarding matters appropriate for stockholder communications with the Board and delivered as described will be delivered to Board members.

Annual Meeting Attendance

The Company's policy is that Board members should attend annual stockholder meetings if reasonably possible. All the members of the Board attended the 2006 annual stockholders meeting.

Code of Ethics

The Company has adopted a code of ethics that applies to all of the Company's directors and employees, including the Company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. The Company will provide a copy of the code of ethics to any person without charge, upon request. Requests for a copy of the code of ethics may be made in writing addressed to: General Counsel, Overstock.com, Inc., 6350 South 3000 East, Salt Lake City, Utah 84121.

Policies and Procedures Regarding Related Party Transactions

The Board has established a written policy and procedures for the review, approval or ratification of related party transactions. Under the Board's policy, any related party transaction that would be required to be disclosed pursuant to Item 404 of Regulation S-K is subject to the prior approval of the Audit Committee unless prior approval is not feasible, in which case the transaction is required to be considered at the Audit Committee's next meeting and, if the Audit Committee determines it to be appropriate, may be ratified at that meeting. In determining whether to approve or ratify a related party transaction, the Audit Committee takes into account, among other factors it deems appropriate, whether the transaction is on terms no less favorable to the Company than terms generally available from an unrelated person under the same or similar circumstances, and the extent of the related person's interest in the transaction. No member of the Audit Committee participates in any approval or ratification of a related party transaction in which such member is a related person, other than to provide all material information regarding the transaction, including information regarding the extent of the member's interest in the transaction, to the Audit Committee. If a related party transaction will be ongoing, the Audit Committee may establish guidelines or other parameters or conditions relating to the Company's participation in the transaction. The Audit Committee may from time to time pre-approve types or categories of transactions by related persons, such as purchases of products or services offered by the Company on the terms such products or services are offered to the public.

Information Regarding Director Nominee and Other Directors

Set forth below is certain information as of the record date regarding the nominee for election and all other directors of Overstock whose term of office continues after the 2007 Annual Meeting.

Class II Directors (Term Expiring in 2007) and Nominee for Election for Terms Expiring in 2010

Name	Age	Position with the Company	Director Since
Jason C. Lindsey	37	Director, President and Chief Operating Officer	June 1999 to October 2002 and October 2005 to present

Jason C. Lindsey is currently the President and Chief Operating Officer and a Director of Overstock. He has served as our President and Chief Operating Officer since April 2006 and as a Director since October 2005. He previously served as a Director from June 1999 to October 2002, and as our Chief Financial Officer from June 1999 to August 2003 and as our President from April 2003 to August 2003. From June 1998 to January 2001 and from September 2003 to present, Mr. Lindsey was and is the Controller of the Haverford Group, an investment company and an affiliate of Overstock. Prior to joining the Haverford Group, Mr. Lindsey was an auditor with Price Waterhouse LLP from January 1996 to June 1998. Mr. Lindsey has a Bachelor of Arts and a Master's degree in accounting from Utah State University.

Class III Directors (Term Expiring in 2008)

Name	Age	Position with the Company	Director Since
Allison H. Abraham	44	Director	March 2002
Ray J. Groves	71	Director	October 2005

Allison H. Abraham has served as a Director of Overstock since March 2002 and is currently a consultant to several early stage companies. She is a member of the Audit Committee and Chair of the Compensation Committee. Ms. Abraham served as President and as a director of LifeMinders, Inc., an online direct marketing company, from May 2000 until the acquisition of LifeMinders by Cross Media Marketing Corp. in October 2001. Prior to joining LifeMinders, Ms. Abraham served as Chief Operating Officer of iVillage Inc., an online media company, from May 1998 to May 2000. From February 1997 to April 1998, Ms. Abraham was President, Chief Operating Officer and a director of Shoppers Express, an online grocery service, and also served as Vice President of Sales and Marketing for several months prior to her promotion. From 1992 to 1996, Ms. Abraham held several marketing and management positions at Ameritech Corporation. She was employed at American Express Travel Related Services in New York City from 1988 to 1992, focusing on the launch of new products and loyalty programs. Ms. Abraham holds a Bachelor of Arts in Economics from Tufts University and a MBA degree from the Darden School at the University of Virginia.

Ray J. Groves has served as a Director of Overstock since October 2005. He is Chair of the Audit Committee and a member of the Compensation Committee. Mr. Groves was with Ernst & Young for 37 years serving as Chairman and Chief Executive Officer for the last 17 years until his retirement in 1994. He then served as Chairman of Legg Mason Merchant Banking Inc. from 1995 to 2001, and was President, Chairman and Senior Advisor of Marsh Inc. from 2001 to 2005. Mr. Groves also serves on the board of directors of Boston Scientific Corporation and Electronic Data Systems Corporation. He is a member of the Council on Foreign Relations. Mr. Groves is a former member of the Board of Governors of the American Stock Exchange and the National Association of Securities Dealers. Mr. Groves is former Chairman of the Board of Directors of the American Institute of Certified Public Accountants. He is a member and former Chair of the Board of Directors of the Ohio State University Foundation and a member of the Dean's Advisory Council of the Fisher College of Business. He is a former member of the Board of Overseers of The Wharton School of the University of Pennsylvania and served as the Chairman of its Center for the Study of the Service Sector. Mr. Groves is a managing director of the Metropolitan Opera Association. Mr. Groves received a B.S. degree in Business from The Ohio State University.

Class I Directors (Term Expiring in 2009)

Name	Age	Position with the Company	Director Since
Patrick M. Byrne	44	Chief Executive Officer and Director	October 1999
Barclay (Clay) F. Corbus	40	Director	March 2007

Dr. Patrick M. Byrne has served as our principal executive officer and as a Director since October 1999, as Chairman of the Board from February 2001 through October 2005 and from April 2006 to the present, and currently serves as our Chief Executive Officer. From September 1997 to May 1999, Dr. Byrne served as President and Chief Executive Officer of Fechheimer Brothers, Inc., a manufacturer and distributor of uniforms. From 1995 until its sale in September 1999, Dr. Byrne was Chairman, President and Chief Executive Officer of Centricut, LLC, a manufacturer and distributor of industrial torch parts. From 1994 to the present, Dr. Byrne has served as a Manager of the Haverford Group, an investment company and an affiliate of Overstock. Dr. Byrne has a Bachelor of Arts degree in Chinese studies from Dartmouth College, a Master's degree from Cambridge University as a Marshall Scholar, and a Ph.D. in philosophy from Stanford University.

Barclay (Clay) F. Corbus has served as a Director of Overstock since March 2007. He is a member of the Audit Committee. Mr. Corbus has served as Co-CEO of WR Hambrecht + Co. since July 2004, and prior to that date served in other executive positions with WR Hambrecht + Co. Prior to joining WR Hambrecht + Co in March 1999, Mr. Corbus was in the investment banking group at Donaldson, Lufkin and Jenrette. Mr. Corbus graduated from Dartmouth College with an AB in Government and has an MBA in Finance from Columbia Business School.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

During 2006:

- None of the members of the Compensation Committee was an officer (or former officer) or employee of the Company or any of its subsidiaries;
- None of the members of the Compensation Committee was a participant in any "related person" transaction;
- None of the Company's executive officers served on the Compensation Committee of another entity where one of that entity's officers served on the Company's Board or as a member of its Compensation Committee; and
- None of the Company's executive officers was a director of another entity where one of that entity's officers served on the Company's Compensation Committee.

COMPENSATION DISCUSSION AND ANALYSIS

Introduction. The Compensation Committee administers our executive compensation program. The committee, which is composed entirely of independent directors, is responsible for reviewing and approving the compensation policies for executive officers and directors, for reviewing and approving all forms of correspondence for our executive officers and directors, for administering our incentive compensation programs (including our stock option plans and our Performance Share Plan), for approving and overseeing the administration of our employee benefits programs, and for providing insight and guidance to management with respect to employee compensation and retention generally. Following is a discussion of the objectives and implementation of our executive compensation programs.

The Compensation Committee operates under a charter adopted by the board of directors, a copy of which is attached as Exhibit B to this proxy statement. The committee annually reviews the adequacy of its charter and recommends changes to the board for approval as it considers appropriate. The committee meets at scheduled times during the year and also acts upon occasion by written consent. The chair of the committee reports on committee activities and makes committee recommendations at meetings of the board of directors. The committee collects and analyzes comparative executive compensation information from relevant peer groups, approves executive salary adjustments, approves awards under incentive/bonus plans, approves discretionary bonuses, and administers the Company's 2005 Equity Incentive Plan and Performance Share Plan. Additionally, from time to time, the committee reviews other human resource issues, including qualified and non-qualified benefits, management performance appraisals, and succession planning. Our Chief Executive Officer and our President make recommendations and participate with respect to decisions concerning other executive officers. The committee has not used outside compensation consultants to determine or recommend the amount or form of executive or director compensation.

Compensation Objectives. Our executive compensation programs seek to attract and retain competent executive management who will build long-term economic value for the Company. Our Chief Executive Officer has refused to accept any salary or bonus since our inception, and prior to 2007 we intentionally set all executive salaries at levels below the amounts we believe our executives could have earned elsewhere. In February 2007, in order to retain our executive management the committee authorized increases to our executives' salaries, but nevertheless continues to adhere to a compensation philosophy that the executive salary and bonus levels should remain modest in comparison to those paid at comparable companies, and that executives' opportunities for more significant compensation should be tied closely to the Company's performance. The objectives of our executive compensation plans and programs are to:

- Emphasize the enhancement of the economic value of the Company;
- Facilitate the retention of senior executives;
- Deliver the total executive compensation package in a cost-effective manner; and
- Encourage management ownership of our common stock.

Our executive compensation policy is designed to encourage decisions and actions that have a positive effect on our economic value and our overall corporate performance. The Performance Share Plan is designed to have no value to the executives or other participants if the Company's economic value fails to increase as described below, and to have increasing value if the Company's economic value and stock price increase. Similarly, grants under the Company's 2005 Equity Incentive Plan (to date in the form of stock option grants) have no value to the executives or other participants if the Company's stock price fails to increase above the exercise prices of the respective option grants. Grants under the Performance Share Plan are included in the Summary Compensation Table and in the Grants of Plan-Based Awards Table below. No grants were made to named executive officers during 2006 under the 2005 Equity Incentive Plan.

The accounting and tax treatment of particular forms of compensation generally do not affect the committee's compensation decisions. However, the committee evaluates the effects of accounting and tax treatment on an ongoing basis and takes those effects into account to the extent it considers appropriate.

The committee reviews executive pay practices at other similarly situated companies as part of its process of determining the appropriate levels of compensation.

Elements of Compensation. The elements of total compensation the Company pays to its named executive officers identified in the Summary Compensation Table below (the "Named Executive Officers") other than its Chief Executive Officer (the "CEO") are as follows:

- Base salary;
- Annual individual cash bonuses;
- Participation in an Annual Bonus Pool;
- Awards under our Performance Share Plan;
- Awards under our 2005 Equity Incentive Plan;
- Matching contributions under our 401(k) plan; and
- Benefits under our health and welfare benefits plans.

Each of these elements is discussed below. Our CEO declined to accept any compensation during 2006 except for a grant of 25,000 performance shares under the Company's Performance Share Plan, as reflected in the Summary Compensation Table and discussed below, and assistance with Schedule 13D filings as reflected in the Summary Compensation Table. The amount shown for the CEO in the Option Awards column of the Summary Compensation Table reflects stock option grants made in prior years.

Base Salary. The base salaries of the Named Executive Officers are reviewed by the committee annually. The committee reviews peer group data as well as a subjective evaluation of individual performance. Salaries in 2006 were intentionally set at levels below the amounts the committee believes the executives could have earned elsewhere. Salary income for each Named Executive Officer for calendar year 2006 is reported in the Summary Compensation Table.

Annual Individual Cash Bonuses. Annual individual cash bonuses paid to the Named Executive Officers are determined by the committee annually and are intended to serve both as an incentive for individual performance and as a retention mechanism. The amounts of the bonuses are determined by the committee based on recommendations made by the CEO and on the committee's subjective view of the performance of the respective Named Executive Officers during the prior year. The amounts are intended to be sufficient to enable the Company to retain the services of the Named Executive officers, and to be meaningful to the Named Executive Officers as an incentive to superior efforts and performance in the following year, but without being more than the amounts necessary to achieve these purposes. Bonus amounts paid to each Named Executive Officer for calendar year 2006 are reported in the Summary Compensation Table.

Annual Bonus Pool. In January 2006 the committee approved the establishment of a bonus plan for 2006 for Company executives with a target of 100% of salaries of the executives. The actual amount of the bonus pool was intended to be established at the end of 2006 by the committee, after considering the CEO's recommendations, according to the committee's judgment of overall accomplishments against the Company's 2006 business plan and growth in the economic value of the Company of at least 20%. The actual bonus pool was intended to range from 0% to 200% of the target amount, and individual executive payments from the bonus pool were intended to range from 0% of salary to 200% of salary. The plan is designed to provide at-risk (incentive) compensation that aligns management's financial interests with those of our stockholders. Because the committee determined that the Company failed to achieve growth in its economic value of at least 20% during 2006, no amounts were paid under this plan with respect to 2006.

Performance Share Plan. The committee approved the adoption of the Company's Performance Share Plan in January 2006. The Performance Share Plan provides for a three-year period for the measurement of the Company's attainment of the performance goal described in the form of grant, but at the Company's sole option the Company may make a payment of estimated amounts payable to a plan participant after two years. The performance goal is normally measured by growth in economic value, as defined in the plan. The amount of payments due to participants under the plan is a function of the then current market price of a share of the Company's common stock, multiplied by a percentage dependent on the extent to which the performance goal has been attained, which is between 0% and 200%. If the growth in economic value is 10% compounded annually or less, the percentage will be 0%. If the growth in economic value is 25% compounded annually, the percentage is 100%. If the growth in economic value is 40% compounded annually or more, the percentage is 200%. If the percentage growth is between these percentages, the payment percentage is determined on the basis of straight line interpolation. Amounts payable under the plan will be payable in cash unless the Company's stockholders approve settlement of awards under the plan with shares of common stock. The provisions of section 162(m) of the Internal Revenue Code could limit the Company's ability to deduct payments made pursuant to the plan. The awards granted under the plan to each Named Executive Officer in 2006 are set forth in the Grants of Plan-Based Awards Table and the dollar amount recognized as compensation cost for financial statement reporting purposes for calendar year 2006 with respect to each such award (determined in accordance with FAS 123R without regard to forfeitures) is set forth in the Summary Compensation Table. The plan is designed to provide at-risk (incentive) compensation that aligns management's financial interests with those of our stockholders. No actual cash or other payments were made under these awards during 2006.

2005 Equity Incentive Plan. We use the grant of stock options under our 2005 Equity Incentive Plan to provide long-term incentive compensation opportunities to our key employees, including the Named Executive Officers. The plan was approved by the stockholders in 2005 and provides for the grant of awards, including qualified and non-qualified stock options to purchase shares of our common stock. Options granted under the plan have been granted at a per share exercise price which is not less than 100% of the fair market value of the underlying shares on the date that the option is granted. Accordingly, options granted under the plan have no intrinsic value unless the market price of the Company's common stock increases after the date of grant. The plan also provides for the grant of restricted stock awards and other types of awards, although to date we have not made any such awards. The plan is designed to provide at-risk (incentive) compensation that aligns management's financial interests with those of our stockholders and encourages management ownership of our common stock. We have not adopted any specific policy regarding the amount or timing of any stock-based compensation under the plan. No options were granted to any Named Executive Officer in 2006. The dollar amount recognized as compensation cost for financial statement reporting purposes for calendar year 2006 with respect to options granted in prior years (determined in accordance with FAS 123R without regard to forfeitures) is set forth in the Summary Compensation Table. Information concerning the number of options held by each Named Executive Officer as of December 31, 2006 is set forth in the Outstanding Equity Awards at Fiscal Year-End Table.

401(k) Plan. We maintain a 401(k) plan, in which Named Executive Officers may participate. During 2006 we matched 50% of participants' contributions on up to 6% of their salaries and contributed 2% as a profit-sharing contribution. The amounts of matching contributions and profit sharing contributions allocated to our Named Executive Officers are set forth in the Summary Compensation Table. Participation in the 401(k) plan is available to employees on a non-discriminatory basis.

Health and Welfare Benefits. We provide health, life and disability insurance and other employee benefits programs to our employees, including our Named Executive Officers. The committee is responsible for overseeing the administration of these programs and believes that the employee benefits programs should be generally comparable to those maintained by comparable companies so that we are able to attract and retain officers and other employees. Our employee benefits plans are provided on a non-discriminatory basis to all employees.

Executive Compensation Action Taken After Year-End. For 2006, the Named Executive Officers (other than our CEO, who received no salary) received salaries that were intentionally set at below-market levels. Effective January 1, 2007 the committee approved increases to the base salaries of the Named Executive Officers (other than the CEO, who continued to receive no salary), based upon a review of peer compensation at other Utah-based companies, with the objective of retaining the Named Executive Officers. The base salaries of the Named Executive Officers, other than the CEO, were each doubled, from $100,000 per year to $200,000 per year, except that the base salary of the President and Chief Operating Officer was increased from $100,000 to $300,000 per year. The committee approved these increases to the base salary levels in order to bring the base salary levels closer to the amounts the committee believes the executives would earn elsewhere, with the goal of retaining the Named Executive Officers. At the same time, the committee approved cash bonuses for the Named Executive Officers (other than the CEO, who declined to accept any bonus) of $120,000 each, except for the President and Chief Operating Officer, who received a bonus of $180,000. The committee approved these bonus payments in part based on its subjective evaluation of the performance and contributions of the Named Executive Officers, and in part to retain the Named Executive Officers.

Timing of Stock Option Grants. The Company does not have any program, plan or practice to time option grants to its Named Executive Officers or to any other employee in coordination with the release of material non-public information. The Company's Board of Directors and Board committees, including the Compensation Committee, normally schedule their regular meetings at least a year in advance. Meetings of the Compensation Committee are generally held in connection with the regularly scheduled Board meetings. The meetings are scheduled in an effort to meet a number of different timing objectives, including the review of financial results and the review of press releases and filings containing financial results. Because the Compensation Committee approves stock option grants at some of its regularly scheduled meetings, option grants are sometimes made within a week before or after the public release of financial results or other material information. However, that is a result of the fact that the Compensation Committee holds its meetings in connection with the Board meetings, not as a result of a program, plan or practice to time option grants. The Company also does not set the grant date of its stock option grants to new executives in coordination with the release of material non-public information, and has not timed, and does not plan to time, its release of material non-public information for the purpose of affecting the value of executive compensation.

Severance And Change of Control Arrangements. None of our executive officers has any contractual right to any severance or change of control payments under any employment or severance agreement. Our executive officers hold options issued under our stock option plans, and have certain payment rights under our Performance Share Plan, and the vesting of options or rights issued under those plans may be accelerated, under certain circumstances, upon or in connection with a change of control of the Company or upon the termination of the employment of the optionee within a period of time after a change of control has occurred. The Performance Share Plan provides that if a participant is terminated within 24 months after a change of control (as defined in the plan), the participant's award under the plan will be cancelled and the participant will receive a payment equal to the then market value of the common stock multiplied by the harvest percentage (as previously described), with the harvest percentage being determined based on the extent to which the relevant performance goal had been achieved as of the end of the calendar quarter prior to the employee's termination, and contains a similar provision applicable if the Company sells a business unit to a purchaser which does not assume responsibility for awards held by employees of that business unit. The 2005 Equity Incentive Plan provides that in the event of a merger or change of control (as defined in the plan) outstanding options shall be assumed by the successor or an equivalent option shall be substituted, or the option shall vest and the participant will have the right to exercise the option. The Compensation Committee believes that these provisions are reasonable.

REPORT OF COMPENSATION COMMITTEE

The Compensation Committee has reviewed the Compensation Discussion and Analysis and discussed it with management. Based on its review and discussions with management, the committee recommended to our Board of Directors that the Compensation Discussion and Analysis be included in the Company's Annual Report on Form 10-K for 2006 and the Company's 2007 proxy statement. This report is provided by the following independent directors, who comprise the Compensation Committee:

Allison H. Abraham
Ray J. Groves

Compensation Paid to Executive Officers

The following table sets forth information for the year ended December 31, 2006 concerning the compensation for services in all capacities to the Company and its subsidiaries of our principal executive officer and our principal financial officer, as well as our other three most highly compensated executive officers, calculated in accordance with the SEC's rules. We refer to these individuals throughout this proxy statement as the "Named Executive Officers".

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Salary ($)	Bonus (1)($)	Stock Awards(2) ($)	Option Awards(3) ($)	Non-Equity Incentive Plan Compensation(4) ($)	All Other Compensation(5) ($)	Total ($)
Patrick M. Byrne, CEO	2006	$ 0	$ 0	$ 114,235	$ 16,583	$ 0	$ 6,750	$ 137,568
David K. Chidester, Senior Vice President, Finance	2006	$ 100,000	$ 120,000	$ 45,694	$ 89,584	$ 0	$ 12,375	$ 367,653
Jason C. Lindsey, President and Chief Operating Officer	2006	$ 100,000	$ 180,000	$ 114,235	$ 205,200	$ 0	$ 3,281	$ 602,717
Stormy D. Simon, Senior Vice President, Customer Care, PR and Branding	2006	$ 100,000	$ 120,000	$ 68,541	$ 167,854	$ 0	$ 12,375	$ 468,770
Steven P. Tryon, Senior Vice President, Logistics	2006	$ 100,000	$ 120,000	$ 45,694	$ 165,900	$ 0	$ 10,979	$ 442,573

(1) Bonuses were paid in February 2007 and relate to 2006.

(2) The Stock Awards column reflects grants in 2006 under the Company's Performance Share Plan. The Performance Share Plan is a long-term incentive-based plan. Performance goals under the plan are measured by growth in economic value, as

defined in the plan, and are specified in the grants made to participants in the plan. The plan provides for a three-year period for the measurement of the Company's attainment of the performance goal, but at the Company's sole option the Company may make a payment of estimated amounts payable to a plan participant after two years. The payments due to participants under the plan are a function of the then-current market price of a share of the Company's common stock, multiplied by a percentage dependent on the extent to which the performance goal has been attained, which will be between 0% and 200%. If the growth in economic value is 10% compounded annually or less, the percentage will be 0%. If the growth in economic value is 25% compounded annually, the percentage will be 100%. If the growth in economic value is 40% compounded annually or more, the percentage will be 200%. If the percentage growth is between these percentages, the payment percentage will be determined on the basis of straight line interpolation. Amounts payable under the plan are payable in cash unless the Company's stockholders approve settlement of awards under the plan with shares of common stock. The amounts reflect the dollar amount recognized for financial statement reporting purposes for the fiscal year ended December 31, 2006, in accordance with FAS 123(R) without regard to estimated forfeitures. Assumptions used in the calculation of these amounts are discussed in Note 19 to the Company's audited financial statements for the fiscal year ended December 31, 2006, included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on or around March 14, 2007.

(3) The Option Awards column reflects awards under the Company's 2005 Equity Incentive Plan and previous equity incentive plans. The amounts reflect the dollar amount recognized for financial statement reporting purposes for the fiscal year ended December 31, 2006, in accordance with FAS 123(R) without regard to estimated forfeitures and thus include amounts from awards granted prior to 2006. No awards were made under this plan to any Named Executive Officer during 2006. Assumptions used in the calculation of these amounts are discussed in Note 18 to the Company's audited financial statements for the fiscal year ended December 31, 2006, included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on or around March 14, 2007.

(4) This column reflects the Company's 2006 Bonus Plan. The 2006 Bonus Plan is an incentive plan for Company executives. The plan established a target of 100% of the amount of the executives' salaries. The actual amount of the bonus pool was to be established at the end of 2006 by the Compensation Committee, after considering the President's recommendations, according to the Compensation Committee's judgment of overall accomplishments against the Company's 2006 business plan and growth in the economic value of the Company of at least 20%. The actual bonus pool was to range from 0% to 200% of the target amount, and individual executive payments from the bonus pool were to range from 0% of salary to 200% of salary. Because the Compensation Committee determined that the Company had not achieved growth in the economic value of the Company of at least 20%, no payments were made under this plan.

(5) Except with respect to the CEO, amounts shown are 401(k) matching contributions from the Company and were made in the form of Company common stock. With respect to the CEO, the amount shown is for assistance with Schedule 13D filings.

Grants of Plan-Based Awards

The following table sets forth information concerning grants of awards pursuant to plans made to the Named Executive Officers during the year ended December 31, 2006.

GRANTS OF PLAN-BASED AWARDS

		Estimated Future Payouts Under Non-Equity Incentive Plan Awards(1)			Estimated Future Payouts Under Equity Incentive Plan Awards(5)			
Name	Grant Date	Threshold (2)($)	Target (3)($)	Maximum (4)($)	Threshold (6)(#)	Target (7)(#)	Maximum (8)(#)	Grant Date Fair Value of Stock and Option Awards(9)
Patrick M. Byrne	1/23/06	N/A	N/A	N/A	0	395,000	790,000	$ 685,000
David K. Chidester	1/23/06	$ 0	$ 100,000	$ 200,000	0	158,000	316,000	$ 246,100
Jason C. Lindsey	1/23/06	$ 0	$ 100,000	$ 200,000	0	395,000	790,000	$ 685,000
Stormy D. Simon	1/23/06	$ 0	$ 100,000	$ 200,000	0	237,000	474,000	$ 369,150
Steven P. Tryon	1/23/06	$ 0	$ 100,000	$ 200,000	0	158,000	316,000	$ 246,100

(1) Amounts reported relate to the Company's 2006 Bonus Plan, under which participants had an opportunity to earn bonuses as described in footnote 4 to the Summary Compensation Table. No bonuses were paid under this plan with respect to 2006.

(2) The minimum amount payable under the plan was $0.

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(3) The target amount was 100% of the executive's salary.

(4) The maximum amount was 200% of the executive's salary.

(5) Amounts reported relate to the Company's Performance Share Plan and the Company's 2005 Equity Incentive Plan; however, no awards were made under the 2005 Equity Incentive Plan to any named executive officer during 2006.

(6) If the Company's growth in economic value is 10% or less compounded annually, the amount payable under the Performance Share Plan is $0.

(7) The target amount is calculated as the amount that would have been payable if the Company's growth in economic value were 25% compounded annually and the market price of the common stock were $15.80 per share, which was the closing price on December 29, 2006.

(8) The maximum amount is calculated as the amount that would have been payable if the Company's growth in economic value were 40% or more compounded annually and the market price of the common stock were $15.80 per share, which was the closing price on December 29, 2006.

(9) Amounts shown relate to grants under the Company's Performance Share Plan. The grant date fair value was determined using an assumed growth in economic value of 25% compounded annually and the stock price on the date of grant ($24.61 for Mr. Chidester, Ms. Simon and Mr. Tryon, and $27.40 for Messrs. Byrne and Lindsey).

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information concerning outstanding equity awards held by each Named Executive Officer as of December 31, 2006.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END(1)

	Option Awards(2)				Stock Awards	
Name	**Number of Securities Underlying Unexercised Options (#) Exercisable**	**Number of Securities Underlying Unexercised Options (#) Unexercisable**	**Option Exercise Price ($)**	**Option Expiration Date**	**Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)**	**Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($)(3)**
Patrick M. Byrne	119,972		$ 5.07	01/21/07		
					25,000	$ 395,000
David K. Chidester	9,881		$ 5.07	01/21/07		
	3,760	240	$ 13.57	03/16/08		
	2,378	388	$ 13.09	07/28/08		
	18,500	6,500	$ 18.58	01/22/09		
					10,000	$ 158,000
Jason C. Lindsey	4,129		$ 5.07	01/21/07		
	2	2,000	$ 8.54	04/28/08		
	4,800	10,200	$ 35.41	10/24/10		
					25,000	$ 395,000
Stormy D. Simon	5,293		$ 11.90	04/22/07		
	6,198	1,009	$ 13.09	07/28/08		
	6,000	1,500	$ 12.84	10/27/08		
	11,100	3,900	$ 18.58	01/22/09		
	5,000	5,000	$ 58.30	01/24/10		
					15,000	$ 237,000
Steven P. Tryon	21,000	14,000	$ 31.03	08/23/09		
					10,000	$ 158,000

(1) Awards shown in this table consist of option grants under the Company's 2005 Equity Incentive Plan and of grants under the Company's Performance Share Plan.

(2) Options vest over the first four years of the option term at a rate of 25% at the end of the first year and 2% per month thereafter.

(3) Amounts shown relate to grants under the Company's Performance Share Plan. The target amount is calculated as the amount that would have been payable if the Company's growth in economic value were 25% compounded annually and the market price of the common stock were $15.80 per share, which was the closing price on December 29, 2006.

Option Exercises and Stock Vested

The following Option Exercises and Stock Vested table provides additional information about the value realized by our Named Executive Officers on option award exercises during the year ended December 31, 2006.

OPTION EXERCISES AND STOCK VESTED

	Option Awards	
Name	**Number of Shares Acquired on Exercise (#)**	**Value Realized on Exercise(1) ($)**
Patrick M. Byrne	17,643	$ 255,647
David K. Chidester	8,776	$ 178,416
	2,796	$ 63,078
Jason C. Lindsey	424	$ 7,335
Stormy D. Simon		
Steven P. Tryon		

(1) Calculated by multiplying the number of shares purchased by the difference between the exercise price and the market price on the date of exercise.

Compensation of Directors

We pay our non-employee directors $20,000 annually at the rate of $5,000 per quarter, and grant options to our non-employee directors, generally at the first Board meeting after the director first joins the Board, and then periodically thereafter. In 2006 we granted options to our non-employee directors, to purchase 5,000 shares each, on April 25, 2006. We also reimburse our directors for out-of-pocket expenses incurred in connection with attending Board and committee meetings. Haverford Valley, L.C., an affiliate of the Company, and certain affiliated entities which make travel arrangements for our executives, also occasionally make travel arrangements for directors to attend Board meetings, for which we reimburse Haverford Valley at rates not in excess of commercially available airline rates. The following table sets forth information concerning compensation paid or accrued by the Company to each non-employee member of the board of directors during the year ended December 31, 2006.

DIRECTOR COMPENSATION TABLE

Name	**Fees Earned or Paid in Cash ($)**	**Option Awards(1) ($)**	**Total ($)**
Allison H. Abraham	$ 20,000	$ 103,465	$ 123,465
John J. Byrne(2)	$ 15,000	$ 66,205	$ 81,205
John A Fisher(3)	$ 20,000	$ 104,152	$ 124,152
Ray J. Groves	$ 20,000	$ 90,593	$ 110,593
Gordon S. Macklin(4)	$ 20,000	$ 95,730	$ 115,730

(1) Reflects the dollar amount recognized for financial statement reporting purposes for the fiscal year ended December 31, 2006 in accordance with FAS 123(R) without regard to estimated forfeitures, and thus includes amounts from awards granted in and prior to 2006. At December 31, 2007, the number of options held by each non-employee director were as follows: Allison H. Abraham: 40,000; John J. Byrne: 0; John A. Fisher: 25,000; Ray J. Groves: 20,000; and Gordon S. Macklin: 32,058.

(2)

Mr. John Byrne resigned from the Board on July 31, 2006.

(3) Mr. Fisher resigned from the Board on February 23, 2007.

(4) Mr. Macklin passed away on January 30, 2007.

POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE-IN-CONTROL

As described in the Compensation Discussion and Analysis included in this proxy statement, none of our Named Executive Officers has any contractual right to any severance or change of control payments under any employment or severance agreement. Our Named Executive Officers hold options issued under our stock option plans, and have certain payment rights under our Performance Share Plan, and the vesting of options or rights issued under those plans may be accelerated, under certain circumstances, upon or in connection with a change of control of the Company or upon the termination of the employment of the Named Executive Officer within a period of time after a change of control has occurred or, under the Performance Share Plan, in connection with the sale of a business unit by the Company or a termination of the Named Executive Officer without cause or a constructive termination of the Named Executive Officer. These provisions do not discriminate in scope, terms or operation in favor of the executive officers of the Company. If a triggering event under the Performance Share Plan had taken place on December 31, 2006, each Named Executive Officer would have received $0. If a triggering event under the 2005 Equity Incentive Plan had taken place on December 31, 2006, the vesting of options held by Named Executive Officers could have been accelerated, but no additional payments or other benefits would have been paid as a result of the acceleration.

EQUITY COMPENSATION PLAN INFORMATION

The following table provides information as of December 31, 2006 with respect to shares of our common stock that may be issued under our existing equity compensation plans.

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance
Equity compensation plans approved by security holders	1,011,000	$ 18.97	1,112,000
Equity compensation plans not approved by security holders	None	N/A	N/A
Total	1,011,000	$ 18.97	1,112,000

REPORT OF THE AUDIT COMMITTEE

Notwithstanding anything to the contrary set forth in any of the Company's previous or future filings under the Securities Act of 1933, as amended, or the Exchange Act of 1934, as amended, that might incorporate this Proxy Statement or future filings with the SEC, in whole or in part, the following report shall not be deemed to be incorporated by reference into any such filings.

The following report concerns the Audit Committee's activities regarding oversight of the Company's financial reporting and auditing process.

The Audit Committee is composed solely of independent directors, as defined by Nasdaq rules, and it operates under a written charter adopted by the Board of Directors. The composition of the Audit Committee, the attributes of its members and the responsibilities of the Audit Committee, as reflected in its charter, are intended to be in accordance with applicable requirements for corporate audit committees. The Audit Committee reviews and assesses the adequacy of its charter on an annual basis.

As described more fully in its charter, the purpose of the Audit Committee is to provide general oversight of the Company's financial reporting, internal control and audit functions. Management is responsible for the preparation, presentation and integrity of the Company's financial statements, accounting and financial reporting principles, and internal controls and procedures designed to ensure compliance with accounting standards, applicable laws and regulations. PricewaterhouseCoopers LLP, the Company's independent registered public accounting firm, is responsible for performing an independent audit of the consolidated financial statements in accordance with generally accepted auditing standards and management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting in accordance with standards established by the Public Company Accounting Oversight Board.

The Audit Committee serves a board-level oversight role, in which it provides advice, counsel and direction to management and the auditors on the basis of the information it receives, discussions with management and the auditors and the experience of the Audit Committee's members in business, financial and accounting matters.

Among other matters, the Audit Committee monitors the activities and performance of the Company's external auditors, including the audit scope, external audit fees, auditor independence matters and the extent to which the independent registered public accounting firm may be retained to perform non-audit services. The Audit Committee has authority and responsibility for the appointment, compensation, retention and oversight of the Company's independent registered public accounting firm. The Audit Committee also reviews the results of the external audit work with regard to the adequacy and appropriateness of the Company's financial, accounting and internal controls. In addition, the Audit Committee generally oversees the Company's internal compliance programs.

The Audit Committee has reviewed and discussed with management and the independent registered public accounting firm (i) the consolidated financial statements for each of the three years in the period ended December 31, 2006, (ii) management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2006, (iii) PricewaterhouseCoopers LLP's evaluation of management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2006, and (iv) PricewaterhouseCoopers LLP's evaluation of the effectiveness of the Company's internal control over financial reporting as of December 31, 2006. Management has represented to the Audit Committee that the Company's consolidated financial statements were prepared in accordance with generally accepted accounting principles. The Audit Committee has discussed with the independent registered public accounting firm the matters required to be discussed by Statement on Auditing Standards No. 61, as amended, "Communications with Audit Committees." The Audit Committee has received the written disclosures and the letter from the independent registered public accounting firm required by the Independence Standards Board Standard No. 1, "Independence Discussions with Audit Committees," and the Committee discussed with the independent registered public accounting firm the independent registered public accounting firm's independence.

Following the Committee's discussions with management and the independent registered public accounting firm, the Committee recommended that the Board of Directors include the audited consolidated financial statements in the Company's annual report in Form 10-K for the year ended December 31, 2006.

Members of the Audit Committee

Ray J. Groves
Allison H. Abraham
Barclay (Clay) F. Corbus

SHARE OWNERSHIP OF MANAGEMENT, DIRECTORS, NOMINEES AND 5% STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of December 31, 2006 by the following individuals or groups:

- each person or entity who is known by us to own beneficially more than 5% of our outstanding stock;
- each of our Named Executive Officers;
- each of our directors and nominees; and
- all directors and executive officers as a group.

The table is based upon information supplied by officers, directors, nominees and principal stockholders and Schedules 13D and 13G filed with the SEC. Except as otherwise indicated below or in the referenced filings on Schedule 13G, and subject to applicable community property laws, to our knowledge the persons named in the table have sole voting and investment power with respect to all shares of common stock held by them. Applicable percentages are based on 23,413,002 shares of common stock outstanding as of December 31, 2006, as adjusted as required by rules promulgated by the SEC.

	Shares Beneficially Owned	
Beneficial Owner (Name and Address)	**Number**	**Percent**
5% Stockholders		
High Plains Investments LLC 700 Bitner Road Park City, Utah 84098	5,592,127(1)	23.9%
Fairfax Financial Holdings Limited 95 Wellington Street West, Suite 800 Toronto, Ontario Canada MSJ 2N7	3,872,481(2)	16.5%
Chou Associates Management Inc. 95 Wellington Street West, Suite 710 Toronto, Ontario Canada MSJ 2N7	2,323,999(3)	9.9%
AXA Financial, Inc. and affiliates 1290 Avenue of the Americas New York, New York 10104	1,969,943(4)	8.4%
Directors and Executive Officers		
Patrick M. Byrne	6,815,514(5)	29.1%
Jason C. Lindsey	164,109(6)	*
Allison H. Abraham	31,200(7)	*
Ray J. Groves	10,400(8)	*
Barclay (Clay) F. Corbus	750(9)	*
Stephen P. Tryon	36,900(10)	*
Jonathan E. Johnson III	71,800(11)	*
David K. Chidester	50,143(12)	*
Stormy D. Simon	35,305(13)	*
Directors and Executive Officers as a Group (9 persons)	7,216,121	30.8%

* Less than 1% of the outstanding shares of common stock.

(1) Patrick M. Byrne, our Chief Executive Officer and Chairman of our Board of Directors, holds 100% of the voting interest in and controls High Plains Investments LLC. Voting and dispositive power are shared.

(2) Reference is hereby made to the Schedule 13G filed by Fairfax Financial Holdings Limited and other reporting persons for information about the number of shares held by each and the nature of the beneficial ownership of each such person as of December 31, 2006.

(3) Reference is hereby made to the Schedule 13G filed by Chou Associates Management Inc. and other reporting persons for information about the number of shares held by each and the nature of the beneficial ownership of each such person as of December 31, 2006.

(4) Reference is hereby made to the Schedule 13G filed by AXA Financial, Inc. and other reporting persons for information about the number of shares held by each and the nature of the beneficial ownership of each such person as of December 31, 2006.

(5) Patrick M. Byrne's shares include 5,592,127 shares held by High Plains Investments LLC, as to which voting and investment power are shared, and 119,972 shares issuable under stock-based awards.

(6)

Mr. Lindsey's shares include 10,531 shares issuable under stock-based awards.

(7) Ms. Abraham's shares include 28,700 shares issuable under stock-based awards.

(8) Mr. Groves' shares include 5,400 shares issuable under stock-based awards.

(9) Mr. Corbus' shares are held in a margin account and are pledged to secure indebtedness.

(10) Mr. Tryon's shares include 22,400 shares issuable under stock-based awards.

(11) Mr. Johnson's shares include 71,800 shares issuable under stock-based awards.

(12) Mr. Chidester's shares include 35,790 shares issuable under stock-based awards. The balance of the shares are held in a margin account and are pledged to secure indebtedness.

(13) Ms. Simon's shares include 35,179 shares issuable under stock-based awards.

OTHER INFORMATION

Certain Relationships and Related Transactions

Since January 1, 2006, there has not been, nor is there currently proposed, any transaction or series of similar transactions requiring disclosure under Item 404 of Regulation S-K other than the transactions described below.

From time to time Haverford Valley, L.C. and certain affiliated entities make travel arrangements for our executives and pay the travel related expenses incurred by our executives on Company business. In 2006 we reimbursed Haverford Valley, L.C. $267,000 for these expenses. The amounts we pay to Haverford Valley, L. C. as reimbursement of air travel expenses are at rates not in excess of commercially available airline rates. The other amounts we reimburse to Haverford Valley, L.C. are reimbursed at its actual cost.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities and Exchange Act of 1934 requires the Company's officers and directors, and persons who own more than ten percent (10%) of the Company's common stock, to file certain reports regarding ownership of, and transactions in, the Company's securities with the SEC. Such officers, directors, and 10% stockholders are also required to furnish the Company with copies of all Section 16(a) forms that they file.

Based solely on a review of reports filed by, and on written representations from, its officers, directors and 10% stockholders, the Company believes that during 2006, all of its officers, directors and 10% stockholders complied with requirements for reporting ownership and changes in ownership of Company common stock under Section 16(a) of the Securities Act of 1934.

Deadline For Receipt of Stockholder Proposals

If you wish to submit a proposal for possible inclusion in our 2008 proxy material, we must receive your notice, in accordance with rules of the SEC and the Company's Bylaws on or before November 26, 2007. The proposal(s) should be mailed to our Secretary at our principal executive offices at 6350 South 3000 East, Salt Lake City, Utah 84121. If you intend to submit a proposal at the 2008 Annual Meeting but do not intend to include the proposal in our proxy statement for that meeting, you must provide appropriate notice to us on or before January 26, 2008. Our bylaws contain specific requirements regarding a stockholder's ability to nominate a candidate for director or to submit a proposal for consideration at an upcoming annual meeting. If you would like a copy of the requirements contained in our bylaws, please contact our Secretary at the address shown above.

Costs of Proxy Solicitation

The solicitation is made on behalf of the Board of Directors of the Company. The Company will pay the cost of soliciting these proxies. We will reimburse brokerage houses and other custodians, nominees and fiduciaries for reasonable expenses they incur in sending these proxy materials to you if you are a beneficial holder of our shares.

Without receiving additional compensation, officials and regular employees of the Company may solicit proxies personally, by telephone, fax or email from stockholders if proxies are not promptly received. We have also hired Georgeson Shareholder Communications to assist in the solicitation of proxies at a cost of approximately $3,500 plus out-of-pocket expenses.

An Annual Report on Form 10-K, excluding exhibits, for the fiscal year ended December 31, 2006 is enclosed with this Proxy Statement. You may obtain an additional copy without charge by sending a written request to Overstock.com, Inc., Attention Investor Relations, 6350 South 3000 East, Salt Lake City, Utah 84121. The Annual Report is also available on our website at *www.overstock.com.*

Voting by Internet or Telephone

For shares of common stock that are registered in the name of the stockholder directly with our transfer agent, Computershare Trust Company, you may vote in person, by returning the enclosed proxy card or by Internet or telephone. Specific instructions to be followed by any registered stockholder interested in voting by Internet or telephone are set forth on the enclosed proxy card. The Internet and telephone voting procedures are designed to authenticate the stockholder's identity and to allow stockholders to vote their shares and confirm that stockholders' instructions have been properly recorded.

For shares of common stock that are beneficially owned by a stockholder and held in "street name" through a bank or brokerage, the stockholder may be eligible to vote such shares electronically by Internet or telephone. A large number of banks and brokerage firms are participating in the ADP Investor Communication Services online program, which provides eligible stockholders who receive a paper copy of our proxy statement and annual report the opportunity to vote by Internet or telephone. If your bank or brokerage firm is participating in ADP's program, your voting form from the bank or brokerage will provide instructions. If your voting form does not reference Internet or telephone information, please complete and return the paper proxy card in the self-addressed, postage paid envelope provided.

Stockholders voting via the Internet or telephone should understand that there may be costs associated with Internet or telephone access, such as usage charges from Internet access providers and telephone companies, that must be borne by the stockholder.

By Order of the Board,

Jonathan E. Johnson III
Secretary

March 30, 2007
Salt Lake City, Utah

Overstock.com, Inc.
6350 South 3000 East Salt Lake City, Utah 84121
(801) 947-3100 *www.overstock.com* Nasdaq: OSTK

Exhibit A.

Performance Share Plan

OVERSTOCK.COM
Performance Share Plan
(amended and restated as of May 15, 2007)

The Purpose of the Plan:

1. ***The purpose of the Plan*** is to advance the interest of Overstock.com, Inc. (the "Company") and its owners by providing executive incentives and by providing for a reasonable sharing of the financial performance of the enterprise.

2. ***Summary:*** From time to time the Board of Directors of the Company (the "Board") may grant to an executive of the Company an award of Performance Shares. Each Performance Share shall have the financial value equal to the market value per share, conditioned upon attainment of a stated Performance Goal over the Award Period specified in the Grant. At the end of the Award Period, the Board (or the Committee, in the case of a Qualified Performance-Based Award) will determine the degree of attainment of the Performance Goal and will assign a Harvest Percentage based on that determination. Each matured Performance Share will then be exchanged for a cash payment equal to the market value of a share of common stock of the Company as of the last day of the Award Period as set forth in the grant agreement ("Financial Value") multiplied by the Harvest Percentage. Notwithstanding anything in this Plan to the contrary, no Participant shall receive payments pursuant to awards of Performance Shares under this Plan that exceed $5,000,000 in any calendar year. The maximum aggregate payments to all Participants made pursuant to awards of Performance Shares granted under the Plan shall not exceed $40,000,000.

3. ***Administration:***

(a) ***Administration by the Board:*** The Plan shall be administered by the Board. The Board shall have the authority to select the executives who shall be participants, to determine the size and terms of an award, to modify the terms of any award that has been granted, to determine the time when awards will be made, to determine the Award Periods applicable to an award, to determine the Harvest Percentages applicable to an award, to determine the terms of a Participant's grant agreement (which need not be identical or uniform), to establish Performance Goals in respect of such Award Periods and to certify whether such Performance Goals were attained (except with respect to Qualified Performance-Based Awards) and to make such other determinations that are not prohibited by this Plan. With respect to Qualified Performance-Based Awards, the Board shall designate a committee, which shall be solely composed of not less than two Outside Directors and shall be appointed by and serve at the pleasure of the Board (the "Committee"), to establish Performance Goals in respect of such Award Periods and to certify whether such Performance Goals were attained. The Board is authorized to interpret the Plan to establish, amend and rescind any rules and regulations relating to the Plan and to make any other determinations that it deems necessary or desirable. Any decision of the Board in the interpretation and administration of the Plan shall lie within its sole and absolute discretion and shall be final, conclusive and binding on all parties concerned. Determinations made by the Board under the Plan need not be uniform and may be made selectively among Participants regardless of whether such Participants are similarly situated. The Board shall have the right to deduct from any payment made under the Plan any taxes required by law to be withheld with respect to such payment. The Board may delegate its duties hereunder to its Compensation Committee or the Committee.

(b)

Administration by the Committee: With respect to Qualified Performance-Based Awards, the Committee shall have the sole authority to establish Performance Goals in respect of the Award Periods applicable to such Qualified Performance-Based Awards and to certify, in writing, whether such Performance Goals and any other material terms were satisfied prior to the payments being made pursuant to such awards. The Committee is authorized to interpret the Plan as it relates to the Performance Goals of Qualified Performance-Based Awards and to make any other determinations that it deems necessary or desirable with respect to the Performance Goals of Qualified Performance-Based Awards. Any decision of the Committee in the interpretation and administration of the Performance Goals of Qualified Performance-Based Awards shall lie within its sole and absolute discretion and shall be final, conclusive and binding on all parties concerned. Determinations made by the Committee under the Plan need not be uniform and may be made selectively among Participants regardless of whether such Participants are similarly situated.

4.

***Eligibility and Participation*:** The Board shall designate those executives who shall be Participants. Participants shall be selected from among the executives who are in a position to have a material impact on the financial results of the Company. The designation of the Participants may be made individually or by groups or classifications of executives, as the Board deems appropriate. Executives shall not have a right to be designated as Participants and the designation of an executive as a Participant shall not obligate the Board to continue such executive as a participant in subsequent periods.

5.

***Grants*:**

(a)

Grant: In each Grant, the Board (or the Committee, in the case of a Qualified Performance-Based Award) shall specify, among other matters, (i) the number of Performance Shares awarded, (ii) the Award Period, (iii) the Performance Goals to be attained within the Award Period, (iv) the method for determining the Harvest Percentage based upon the level of achievement of the Performance Goals, and (v) the maximum Award Payment.

(b)

***Performance Goals*:** The Performance Goals for any award of Performance Shares shall be as determined by the Board (or by the Committee, in the case of Qualified Performance-Based Awards) and as stated in the grant agreement. Normally, the Performance Goal will be based on some reasonable measure of growth in Economic Value per share of the enterprise, or on some similar measure of financial performance.

(c)

***Payment*:** As soon as practicable after the end of the Award Period, the Board (or the Committee, in the case of Qualified Performance-Based Awards) shall determine (i) whether the applicable Performance Goals have been attained with respect to a given award and (ii) the Harvest Percentage applied to a given award. At the end of the Award Period the Board shall ascertain the actual value of the award. Notwithstanding anything to the contrary, with respect to Qualified Performance-Based Awards, no payment shall be made with respect to such awards until the Committee certifies, in writing, that the applicable Performance Goals and any other material terms have been satisfied. Unless otherwise determined by the Board or otherwise set forth in a grant agreement, the actual value of an award shall be equal to the Financial Value of the Performance Shares multiplied by the Harvest Percentage. A Participant's actual value will be settled through a cash payment to the Participant no later than March 15 of the calendar year immediately following the last day of the Award Period. Notwithstanding the above, the Board, in its sole discretion, may settle any payment, or portion thereof, made pursuant to this Plan (including any payment, or portion thereof, under any Award made prior to the approval of this Plan by the stockholders, as long as the stockholders shall have approved this Plan prior to the payment of the amount payable under any such Award) in shares of common stock of the Company in lieu of cash based on the market value of the shares of common stock determined as of a date that is no more than ten (10) days prior to the date of payment. Any shares of common stock of the Company paid to a Participant pursuant to the prior sentence may be registered under the Securities Act of 1933 or, subject to applicable securities laws, may be issued in an unregistered transaction. Notwithstanding anything in this Section 5(c) to the contrary, the total number of shares of common stock of the Company that may be issued under the Plan shall not exceed 392,000.

6. ***Termination of Employment*:** Except as set forth in Section 7 or otherwise set forth in a grant agreement a Participant shall immediately forfeit all outstanding awards upon any termination of employment prior to the end of the applicable Award Period. The Board may at its discretion provide that if a Participant dies, retires, is disabled, or is granted a leave of absence, or if the Participant's employment is otherwise terminated in a manner reasonably judged to be not seriously detrimental to the Company, then all or a portion of the Participant's award that would have otherwise been paid under Section 5(c), as determined by the Board, may be paid to the Participant (or beneficiary) at the time set forth in Section 5(c).

7. ***Change of Control*:**

(a) If a Termination event occurs with respect to a Participant within 24 months after a Change of Control, then each award held by such Participant that was granted prior to the Change of Control shall be cancelled and such Participant shall be entitled to receive in respect of each such canceled award a payment equal to the product of (i) the Financial Value (provided that the market value shall be determined as of the date of the Change of Control) of 100% of the Performance Shares and (ii) the applicable Harvest Percentage. Such payment shall be made on the date of termination of the Participant's employment or as soon as administratively feasible thereafter, but in no event after the later of (i) the last day of the calendar year in which the Participant's employment terminates, or (ii) the fifteenth (15^{th}) day of the third calendar month following the date of termination of the Participant's employment. The applicable Harvest Percentage will be determined based on the extent to which the Performance Goal has been achieved as of the last day of the calendar quarter ending prior to the date of the applicable Termination event.

(b) Notwithstanding anything herein to the contrary, if, following a Change of Control, a Participant's employment remains continuous through the end of an Award Period, then the Participant shall be paid with respect to those awards for which he would have been paid had there not been a Change of Control, and the actual value and time of payment shall be determined in accordance with Section 5 above.

8. ***Code Section 409A*:** Notwithstanding anything in this Plan to the contrary, in the event that a Participant is deemed to be a "specified employee" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), no payment that is "deferred compensation" subject to Code Section 409A shall be made to the Participant prior to the date that is six (6) months after the date of the Participant's separation from service (as defined in Code Section 409A) or, if earlier, the Participant's date of death.

9. ***Amendments or Termination*:** The Board may amend, alter or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would impair any of the rights or obligations under any award theretofore granted to a Participant without such Participant's consent; provided, however, that the Board may amend the Plan in such manner as it deems necessary to permit the granting of awards meeting the requirements of the Code, or any successor thereto, or other applicable laws. Notwithstanding anything in this Section 9 to the contrary, the Board may not adjust upward the amount payable to a Covered Employee with respect to a Qualified Performance-Based Award or waive or alter the Performance Goals associated therewith in a manner that would violate Section 162(m) of the Code.

10.

***No Right to Employment*:** Neither the Plan nor any action taken hereunder shall be construed as giving any Participant or other person any right to continue to be employed by, or to continue to perform services for, the Company or any subsidiary, and the right to terminate the employment of or performance of services by any Participant at any time and for any reason is specifically reserved to the Company and its subsidiaries.

11.

***Nontransferability of Awards*:** An award shall not be transferable or assignable by the Participant, other than as described in Section 17 of this Plan.

12.

***Reduction of Awards*:** Notwithstanding anything to the contrary herein, the Board, in its sole discretion (but subject to applicable law), may reduce any amounts payable to any Participant hereunder in order to satisfy any liabilities owed to the Company or any of its subsidiaries by the Participant.

13.

***Participation of Subsidiaries*:** If a subsidiary wishes to participate in the Plan and its participation shall have been approved by the Board, the Board of Directors of the subsidiary shall adopt a resolution in form and substance satisfactory to the Committee authorizing participation by the subsidiary in the Plan. A subsidiary that adopts the Plan in accordance with the Section shall be permitted to rename the Plan under the name of such subsidiary. A subsidiary may cease to participate in the Plan at any time by action of the Board or by action of the Board of Directors of such subsidiary, which latter action shall be effective not earlier than the date of delivery to the Secretary of the Company of a certified copy of a resolution of the subsidiary's Board of Directors taking such action. Termination of participation in the Plan shall not relieve a subsidiary of any obligations theretofore incurred by it under the Plan. The Board in its discretion may waive compliance with any provisions in this section.

14.

***Claims Procedure*:** In general, any claim for benefits under the Plan shall be filed with the Board of Directors by a Participant or beneficiary. The Board will consider the claim promptly.

15.

***Miscellaneous Provisions*:** The Company is the sponsor and legal obligor under the Plan and shall make all payments hereunder, other than any payments to be made by any of the subsidiaries, as described below (in which case such payments shall be made by such subsidiary, as appropriate). If a subsidiary adopts the Plan in accordance with Section 12, the subsidiary shall be responsible for all payments made under the Plan for Awards granted by the Board of Directors of the subsidiary including expenses involved in administering the Plan at the subsidiary level. The Plan is unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to ensure the payment of any amounts under the Plan, and the Participant's rights to any payment hereunder shall be no greater than the rights of the Company's (or the applicable subsidiary's) unsecured creditors. All references to Sections herein shall be deemed to be references to the specified sections of this Plan.

16.

***Taxes*:** The Company and its subsidiaries shall have the right to deduct from any payment made under the Plan any taxes required by law to be withheld with respect to such payment. The Board, in its sole discretion, may permit withholding obligations to be settled with common stock of the Company, including common stock of the Company that is part of the award that gives rise to the withholding requirement; provided, however, that not more than the legally required minimum withholding may be settled with common stock of the Company. The obligations of the Company under this Plan shall be conditional on such payment or arrangements, and the Company and its subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant. The Board may establish such procedures as it deems appropriate, including making irrevocable elections, for the settlement of withholding obligations with common stock of the Company.

17.

***Choice of Law*:** The Plan shall be governed by and construed in accordance with the laws of Utah.

18. ***Designation of Beneficiary by Participant*****:** A Participant may name a beneficiary to receive any payment to which he/she may be entitled in respect to a Grant in the event of his/her death. A Participant may change his/her beneficiary from time to time. If the Participant has not designated a beneficiary, or if no designated beneficiary is living on the date on which any amount becomes payable, that amount shall be paid to the Participant's estate.

19. ***Schedule of Definitions*****:** The attached Schedule of Definitions shall be considered an integral part of this Plan.

20. ***Effective Date of the Plan*****:** The Plan was originally effective as of January 1, 2006 and has been amended and restated effective as of the date of approval of this Plan by the stockholders of the Company.

21. ***Shareholder Approval*****:** The grant of all Qualified Performance-Based Awards are conditioned on the approval of this Plan by the shareholders of the Company. If this Plan is not approved by the stockholders, then the Plan as originally adopted by the Board (and as thereafter amended or modified by the Board to the extent that stockholder approval of such amendments is not required) shall remain in full force and effect.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed this day of , 2007.

OVERSTOCK.COM, INC.

By: ______________________

Patrick M. Byrne
CEO

Schedule of Definitions: terms used in the Plan or in a Grant shall have the following meanings:

Change of Control: shall mean If any person or group (within the meaning of sections 13(d) or 14(d)2 of the Exchange Act) other than members of the Byrne Family own thirty-five percent or more of the then outstanding common stock of the Company.

Economic Value (EV): shall mean the economic value of the Company calculated consistent with the regularly calculated EV in the financial account prepared by the controller in accordance with the EV definition adopted by the Board at the beginning of award period.

Economic Value Per Share: shall mean the EV divided by the number of fully diluted common shares outstanding.

Grant: shall mean an offer by the Board to an executive to participate in the Performance Share Plan. Such Grant will specify the number of Performance Shares being granted, the Performance Goal, the Award Period, the method for judging attainment of the goal and for setting the Harvest Percentage, a maximum award value if any, and other relevant terms.

Harvest Percentage: shall be determined by the Board at the end of the Award Period specified in the Grant, and will represent the Board's judgment of the degree to which the Company's actual financial performance has met the Performance Goal specified in the Grant. Normally the Harvest Percentage will range from 0% thru 200% according to a scale specified in the Grant. This Harvest Percentage will then be multiplied by the market value of the Performance Shares granted, to produce the actual cash value of the Grant.

Performance Share: a unit granted to an executive under the Performance Share Plan. The unit will have the financial equivalence of a share of common stock in the Company, conditioned upon the attainment of a specified Performance Goal over a specified Award Period.

Related Employment: shall mean the employment of a participant by an employer who is not the Company or an affiliate of the Company, provided (i) such employment is undertaken by the participant and continued at the request of the Company; (ii) immediately prior to undertaking such employment the participant was an employee of the Company, or any of its affiliates or was engaged in related employment; and (iii) such employment is recognized by the Board, in its sole discretion, as related employment.

Termination event: shall be considered for this plan to be a Termination Without Cause or to be a Constructive Termination.

a.

Termination Without Cause: **A termination of the Participant's employment with the Company or a subsidiary by the Company or the subsidiary other than (i) due to the Participant's death or disability as defined in the Performance Plan Grant, or (ii) for Cause. A transfer of a Participant's employment to an affiliate of the Company shall not, by itself, be considered a Termination without Cause hereunder. For this purpose, "Cause" shall mean (a) an act or omission by the Participant that constitutes a felony, (b) willful gross negligence or willful gross misconduct by the Participant in connection with his employment by the Company or by a subsidiary which causes, or is likely to cause, material loss or damage to the Company. Notwithstanding anything herein to the contrary, a termination of a Participant's employment with the Company or one of its subsidiaries due solely to the consummation of a corporate transaction described in clause (i) of the definition of Change in Control shall not be deemed to be a "Termination Without Cause" if the Participant is employed by the acquiror or one of its affiliates and the acquiror or one of its affiliates formally assumes the Company's obligations under this Plan or places the Participant in a similar or like plan with no diminution of the value of the awards granted.**

b.

Constructive Termination. A termination of employment with the Company and its affiliates at the initiative of the Participant that the Participant declares, by prior written notice delivered to the Secretary of the Company, to be a Constructive Termination by the Company or an affiliate and which follows (i) a material decrease in his/her salary or (ii) a material diminution in the authority, duties or responsibilities of his/her position as a result of which the Participant determines in good faith that he/she cannot continue to carry out his/her job in substantially the same manner as it was intended to be carried out immediately before such diminution. Notwithstanding anything herein to the contrary, a Constructive Termination shall not occur until and unless 30 days have elapsed from the date the Company receives such written notice from the Participant and, during that period, the Company fails to cure, or cause to be cured, the circumstance serving as the basis on which the declaration of Constructive Termination is given.

[FORM OF GRANT]

OVERSTOCK.COM

PERFORMANCE SHARE PLAN

20 -20 Grant

THIS GRANT is made, effective as of , between Overstock.com, Inc. (the "Company") and (the "Participant").

RECITALS:

WHEREAS, the Company has adopted the Performance Share Plan ("Plan"), which Plan is incorporated herein by reference and made part of this Grant; and

WHEREAS, the Board has determined that it would be in the best interest of the Company and its owners to grant the award provided for herein to the Participant pursuant to the Plan and the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

1. *Grant:* Subject to the terms and conditions of the Plan and the additional terms and conditions set forth in this Grant, the Company hereby grants to the Participant a Performance Share Award of shares.

2. *Award Period:* The Award Period shall be through .

3. *Performance Goal:* The Performance Goal shall be a 25% return on equity, measured by compounded growth in EV per share of the Company.

4. *Harvest Percentage:* Shall be dependent on the extent to which the Performance Goal is attained, and shall be determined as follows:

Growth in Economic Value	**Harvest Percentage**
10% or lower	0%
25%	100%
40% or higher	200%

For percentage growth between 10% and 40%, the Harvest Percentage will be determined on the basis of straight line interpolation.

5. *Award Payment:* Subject to all terms and conditions of the Plan, the Participant's actual value at the end of the Award Period will be settled through a cash, stock or combined payment to the Participant. Unless otherwise determined by the Board or otherwise set forth in a Grant, a Participant's actual value with respect to an Award shall be equal to the then market value of the shares multiplied by the Harvest Percentage. If the Company receives stockholder approval to do so, the Board may consider settlement with common stock, if the participant so requests. Nothwithstanding any other provision of this Grant, the Award, or the Plan, the maximum Award payment made pursuant to this Notice of Grant and the Award granted hereunder shall not exceed $5,000,000. Any such payment hereunder shall be made so as not to cause the application of penalties under Section 409A of the Internal Revenue Code.

6. *Termination of Employment:* Except as provided in Section 6 or Section 7 of the Plan, this Award shall be canceled, and no payment shall be payable hereunder, if the Participant's continuous employment or Related Employment with the Company shall terminate for any reason prior to the end of the Award Period.

7. *Successor Requirement:* This Grant shall inure to the benefit of and be binding upon the Company and its successors and assigns. The Company shall request any purchaser of a business unit in which the Participant is employed (a "Purchaser"), to fully assume the obligations of the Company under this Grant. If a Purchaser declines to assume such obligations, the Company shall remain obligated under the terms of this Grant and the Board, in its sole discretion, may elect to cancel the Grant and to make an Award Payment based on the applicable measures at the time of purchase or in accordance with Section 7 of the Plan, if the Plan's Change in Control provisions are applicable. Any such payment hereunder shall be made so as not to cause the application of penalties under Section 409A of the Internal Revenue Code.

8. *Definitions:* All terms not otherwise defined herein shall have the same meaning as in the Plan.

9. *Withholding:* The Participant agrees to make appropriate arrangements with the Company for satisfaction of any applicable income tax withholding requirements, including the payment to the Company, at the termination of the Award Period (or such earlier or later date as may be applicable under the Code), of all such taxes and other amounts, and the Company shall be authorized to take such action as may be necessary, in the opinion of the company's counsel (including, without limitation, withholding amounts from any compensation or other amount owing from the Company to the Participant), to satisfy all obligations for the payment of such taxes and other amounts.

10. *Reduction of the Award:* Notwithstanding anything to the contrary herein, the Board, in its sole discretion (but subject to applicable law), may reduce any amounts payable to the Participant in order to satisfy any liabilities owed to the Company by the Participant.

11. *No Right to Continued Employment:* Neither the Plan nor this Grant shall be construed as giving the Participant the right to be retained in the employ of, or in any consulting relationship to, the Company or any of its subsidiaries. Further, the Company may at any time dismiss the Participant or discontinue any consulting relationship, free from any liability or any claim under the Plan or this Grant, except as otherwise expressly provided in the Plan and in this Grant. In addition, nothing herein shall obligate the Company to make future Grants to the Participant.

12. *Award Subject to Plan:* By entering in this Grant the Participant agrees and acknowledges that the Participant has received and read a copy of the Plan and that this Award is subject to all of the terms and provisions set forth in the Plan and in this Grant. In the event of a conflict between any term or provision contained in this Grant and a terms or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.

13. *Designation of Beneficiary by Participant:* A Participant may name a beneficiary to receive any payment to which he/she may be entitled in respect of this Award in the event of his/her death, by notifying the Company. A Participant may change his/her beneficiary from time to time in the same manner. If the Participant has not designated a beneficiary or if no designated beneficiary is living on the date on which any amount becomes payable to a Participant's beneficiary, that amount shall be paid to the Participant's estate.

14. *Notices:* Any notice necessary under this Grant shall be addressed to the Company at its primary corporate headquarters and to the Participant at the address appearing in the personnel records of the Company for such Participant or to either party at such other address as such party hereto may hereafter designate in writing to the other. Any such notice shall be deemed effective upon receipt thereof by the addressee.

15. *Signature in Counterparts:* This Grant may be signed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument, with the same effect as if the signatures thereto and hereto were upon the same instrument.

16. *Special 2006-2008 Understanding with Respect to Early Partial Distribution:* For this 2006-2008 Grant only, the Company, in its sole discretion, may, at the end of the second calendar year during the Award Period, distribute 2/3 of the expected value of this Grant to the Participant, provided that the Participant's continuous employment or Related Employment with the Company has not terminated prior to December 31, 2007. Such distribution, if made, shall be made no later than March 15, 2008. The expected value of the Grant will be calculated by the Controller and approved by the Board or the Compensation Committee. The expected value may include a margin for unexpected unfavorable developments. The amount of the distribution will be based on the fair market value of the stock as of the date the distribution is made. If a distribution is made pursuant to this paragraph, the value of the Grant as of any future date shall be offset by the amount distributed pursuant to this paragraph. Notwithstanding anything herein to the contrary, no distribution may be made pursuant to this paragraph if any portion of this Grant ceases to be subject to a substantial risk of forfeiture for purposes of Section 409A of the Internal Revenue Code of 1986, as amended, prior to January 1, 2007.

IN WITNESS WHEREOF, the parties hereto have executed this Grant as of the effective date set forth above.

Participant	OVERSTOCK.COM, INC.
	By ______________________
Name	Patrick M. Byrne President

A-9

Exhibit B.

Compensation Committee Charter

**CHARTER FOR THE COMPENSATION COMMITTEE
OF THE BOARD OF DIRECTORS
OF
OVERSTOCK.COM, INC.**

PURPOSE:

The purpose of the Compensation Committee established pursuant to this charter is to discharge the Board's responsibilities relating to compensation of the Company's directors and officers. The Committee has overall responsibility for approving and evaluating the director and officer compensation plans, policies and programs of the Company.

The Compensation Committee is also responsible for producing an annual report for inclusion in the Company's proxy statement and reviewing and approving the Compensation Discussion & Analysis and the supporting compensation disclosure materials that are included in the Company's proxy statement.

The Compensation Committee has the authority to undertake the specific duties and responsibilities listed below and will have the authority to undertake such other specific duties as the Board of Directors from time to time prescribes.

MEMBERSHIP:

The Compensation Committee shall consist of a minimum of two (2) Non-employee Directors (as such term is defined in Rule 16b-3(b)(3)(i) of the Securities Exchange Act of 1934, as amended). In addition, the Compensation Committee members shall be "outside directors" within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "***IRC***"). Each member shall also meet the independence standards of applicable law and of the Nasdaq Stock Market, Inc.

The Compensation Committee members shall be appointed by and serve at the discretion of the Board of Directors.

RESPONSIBILITIES:

The responsibilities of the Compensation Committee include:

(i) Reviewing and approving the compensation policies for executive officers and directors of the Company, and such other officers of the Company as directed by the Board of Directors;

(ii) Reviewing and approving all forms of compensation to be provided to the executive officers and directors of the Company;

(iii) In consultation with senior management, reviewing and approving general compensation goals and guidelines for the Company's employees and the criteria by which bonuses and stock compensation awards to the Company's employees are determined;

(iv) Acting as Administrator of the Company's equity compensation plans (the "Plans") within the authority delegated by the Board of Directors. In its administration of the Plans, the Compensation Committee may, (1) grant stock options, stock purchase rights and other awards permitted by the Plans to individuals eligible for such grants (including grants to individuals subject to Section 16 of the Securities Exchange Act of 1934, as amended, in compliance with Rule 16b-3 thereunder), (2) amend such stock options or stock purchase

rights to the extent permitted by the Plans and applicable law, and (3) take all other actions permitted under the Plans;

(v) Reviewing and making recommendations to the Board of Directors with respect to amendments to the Plans and changes in the number of shares reserved for issuance thereunder;

(vi) Reviewing and making recommendations to the Board of Directors regarding other plans to be proposed for adoption or adopted by the Company for the provision of compensation to employees of, directors of and consultants to the Company;

(vii) Reviewing and discussing with management the Company's disclosures under "Compensation Discussion and Analysis" (the "CD&A") to be included in the Company's annual report on Form 10-K and/or proxy statement, and based on such review and discussion, making a recommendation to the Board as to whether the CD&A should be included in the Company's annual report on Form 10-K and, as applicable, the Company's proxy statement; and

(viii) Taking such other actions as the Compensation Committee deems necessary or appropriate in connection with its duties hereunder or as may be authorized by the Board.

COMMITTEE PERFORMANCE EVALUATION:

The Committee shall produce and provide to the Board on an annual basis a performance evaluation of the Committee's performance of its duties under this charter. The evaluation shall also include any recommendations to improve the charter of the Committee. The performance evaluation shall be conducted in such a manner as the Committee deems appropriate. Any member of the Committee may present the evaluation to the Board either orally or in writing.

MEETINGS:

It is anticipated that the Compensation Committee will meet at least twice each year. However, the Compensation Committee may establish its own schedule, which it will provide to the Board of Directors in advance. At a minimum of one of such meetings annually, the Compensation Committee will consider stock plans, performance goals and incentive awards, and the overall coverage and composition of the compensation package.

MINUTES:

The Compensation 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:

The Compensation Committee will provide written reports to the Board of Directors of the Company regarding recommendations of the Compensation Committee submitted to the Board of Directors for action, and copies of the written minutes of its meetings.

RESOURCES AND AUTHORITY:

The Committee shall have the resources and authority appropriate to discharge its duties and responsibilities, including the authority to select, retain, terminate, and approve the fees and other retention terms of special counsel or other experts or consultants, as it deems appropriate, without seeking approval of the Board or management. The Committee may, at its discretion, also review the choice of any consultants or other experts recommended by management for the purpose of reviewing executive Company compensation. Authority to select, retain, terminate, and approve the fees and other retention terms of any compensation consultants retained to assist in the evaluation of director, CEO, or senior executive compensation shall be vested solely in the Committee.

Overstock.com, Inc.

MR. A. SAMPLE	000004	000000000.000000 ext	000000000.000000 ext
DESIGNATION (IF ANY)		000000000.000000 ext	000000000.000000 ext
ADD 1		000000000.000000 ext	000000000.000000 ext
ADD 2			
ADD 3			
ADD 4			
ADD 5			
ADD 6			

Using a **black ink** pen, mark your votes with an **X** as shown in this example. Please do not write outside the designated areas. ý

Annual Meeting Proxy Card

123456 C012456789 12345

A Proposals The Board of Directors recommends a vote FOR the nominee listed and FOR Proposals 2 and 3.

1. Election of Director:	For	Withhold
01 Jason C. Lindsey	o	o

	For	Against	Abstain		For	Against	Abstain
2. Approval of the Company's Performance Share Plan as described in the Proxy Statement.	o	o	o	3. Ratification of the selection of PricewaterhouseCoopers LLP as Overstock.com's independent accountants for 2007.	o	o	o

B Non-Voting Items

Meeting Attendance
Mark the box to the right if you plan to attend the Annual Meeting. o

C Authorized Signatures This section must be completed for your vote to be counted. Date and Sign Below C

Please sign exactly as name(s) appears hereon. Joint owners should each sign. When signing as attorney, executor, administrator, corporate officer, trustee, guardian, or custodian, please give full title.

Date (mm/dd/yyyy) Please print date below.	Signature 1 Please keep signature within the box.	Signature 2 Please keep signature within the box.

C 1234567890 J N T

2 2 D V 0 1 2 5 4 11

MR A SAMPLE (THIS AREA IS SET UP TO ACCOMMODATE
140 CHARACTERS) MR A SAMPLE AND MR A SAMPLE AND
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Proxy Overstock.com, Inc.

PROXY SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS
FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON TUESDAY, MAY 15, 2007

The undersigned hereby appoints Patrick M. Byrne and Jonathan E. Johnson III, or either of them, as proxies and attorneys-in-fact, each with full power of substitution, to represent the undersigned at the Annual Meeting of Stockholders of Overstock.com, Inc. (the "Company") to be held at the warehouse of the Company located at 1455 South 5500 West, Salt Lake City, UT 84104, at 1:00 p.m. on May 15, 2007, including any adjournments or postponements thereof, and to vote the number of shares the undersigned would be entitled to vote if personally present at the meeting.

UNLESS A CONTRARY DIRECTION IS INDICATED, THIS PROXY WILL BE VOTED FOR THE NOMINEE LISTED IN PROPOSAL 1, FOR PROPOSAL 2 AND FOR PROPOSAL 3, AS MORE SPECIFICALLY DESCRIBED IN THE PROXY STATEMENT. IF SPECIFIC INSTRUCTIONS ARE INDICATED, THIS PROXY WILL BE VOTED IN ACCORDANCE WITH THOSE INSTRUCTIONS.

PLEASE COMPLETE, DATE AND SIGN THIS PROXY ON THE OTHER SIDE AND RETURN PROMPTLY IN THE ENCLOSED ENVELOPE.