

## Case Study: Overstock Accounting Violations

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My battle to make Overstock.com comply with accounting rules and the vicious retaliation campaign its CEO Patrick Byrne unleashed against me

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## Contents

Introduction .....	2
Patrick Byrne claimed to have a photographic memory .....	2
Early lies about profitability.....	3
Attacks on journalists and critics .....	4
Overstock.com violated SEC Regulation G governing non-GAAP pro forma numbers.....	5
How Overstock.com used an improper EBITDA calculation to materially inflate income .....	5
False statements and personal attacks by Overstock management .....	7
Vindication on reporting violations of Regulation G .....	7
Overstock.com violated GAAP .....	8
Patrick Byrne responds .....	10
Retaliation by Byrne.....	11
New excuse: A “gain contingency” existed.....	12
Questioning Overstock.com’s “gain contingency” claim.....	12
SEC investigates .....	13
Vindication on reporting GAAP violations .....	15
Continued retaliation.....	16
Dodd-Frank protection for whistleblowers .....	19

## Introduction

Over the last several years, my blog<sup>1</sup> exposed a pattern of accounting shenanigans which helped Overstock.com (NASDAQ: OSTK), also known as O.co, materially overstate its earnings.

From Q2 2007 to Q2 2008, the company used improper EBITDA calculations to materially inflate its financial performance in violation of SEC Regulation G. From Q4 2008 to Q3 2009, it violated Generally Accepted Accounting Principles (GAAP) and materially inflated its reported earnings.

In both cases, I provided the company with detailed information about its accounting irregularities, but its management chose to vilify me rather than immediately correct its financial reports. My accounting analysis was proven correct by its later revisions of financial reports. Even after Overstock.com revised its financial reporting, it still continued to smear me in retaliation for exposing accounting irregularities.

## Patrick Byrne claimed to have a photographic memory

In February 2000, Patrick Byrne claimed that he has a photographic memory. According to Fortune Magazine:<sup>2</sup>

He has a nearly *photographic memory*, which he is fond of demonstrating with what he calls his memory trick: If he studies a deck of cards for a couple of minutes, he can recite them back, one by one, in either direction. He can even recite the same list again six months later.

Seven years later, in December 2007, Byrne had appeared on Utah Now and showed off his photographic memory. He asked interviewer Doug Fabrizio, "What is your birthday?" Fabrizio replied, "July 18." Within seconds, Byrne correctly told Fabrizio the exact day of the week he was born on: [Saturday](#).<sup>3</sup> Byrne further bragged, "When I was seven, I could memorize cards."<sup>4</sup>

Despite his claim to a photographic memory, Byrne told several media outlets that Overstock.com was profitable when it was actually losing money.

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<sup>1</sup> White Collar Fraud, by Sam Antar, [www.whitecollarfraud.blogspot.com](http://www.whitecollarfraud.blogspot.com)

<sup>2</sup> Fortune Magazine: The Renaissance Man of E-Commerce, by Nicholas Stein (February 7, 2000), [http://money.cnn.com/magazines/fortune/fortune\\_archive/2000/02/07/272813/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2000/02/07/272813/index.htm)

<sup>3</sup> What Day Of The Week: July 18, 1964, <http://www.dayoftheweek.org/?m=July&d=18&y=1964&go=Go>

<sup>4</sup> Utah Now: Who is Patrick Byrne (December 12, 2007), [http://www.kued.org/uploads/pdfs/217-89\\_patrick\\_byrne\\_transcript.pdf](http://www.kued.org/uploads/pdfs/217-89_patrick_byrne_transcript.pdf)

## Early lies about profitability

On December 11, 2001, Patrick Byrne appeared on Fox News claimed, "We're profitable." Brenda Buttner asked, "Your real honest-to-goodness profit, not pro forma?" Patrick Byrne responded, "None of that stuff."<sup>5</sup>

On March 1, 2002, Business 2.0 Magazine reporter Owen Thomas asked, "Are you profitable? Patrick Byrne responded, "Yes, that's real GAAP profit, not Amazon-bullshit-accounting profit."<sup>6</sup>

Patrick Byrne was critical of companies who used non-GAAP pro forma financial measures such as EBITDA (earnings before interest, taxes, depreciation, and amortization) to show profits. He made it clear the Overstock.com was reporting profits on a GAAP basis. However, later filings with the SEC contradicted Byrne's claims that Overstock.com was "profitable." It was losing money.

On March 5, 2002, Overstock.com filed an S-1 report in connection with its planned initial public offering.<sup>7</sup> It contradicted Byrne's claim that his company was anywhere near "profitable." The company lost money in each and every quarter since its inception. It lost \$13.8 million in 2001 and lost \$2.997 million in the quarter ended December 31, 2001. That was in the same quarter when Byrne appeared on Fox and claimed, "We' profitable."

In the quarter ended March 31, 2002, Overstock.com lost another \$3 million and continued to lose money in later quarters.<sup>8</sup> That was in the same quarter where Byrne was asked by Business 2.0 if Overstock.com is "profitable" and he replied, "Yes, that's real GAAP profit...."

In future years, Patrick Byrne continued to be critical of companies who used non-GAAP pro forma financial measures such as EBITDA to show profits. Byrne's deceptive behavior continued as Overstock.com resorted to violating accounting rules to materially overstate its financial performance and even falsely report profits when it was actually losing money. Anyone who questioned Byrne's antics or his company's financial performance faced harsh reprisals from him and his paid cronies.

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<sup>5</sup> Fox News, Your World with Neil Cavuto (December 12, 2001), <http://www.foxnews.com/story/0,2933,40671,00.html>

<sup>6</sup> Business 2.0, Amazon Hunter: Patrick Byrne of Overstock.com plans to have a very good year, by Owen Thomas (March 2002 issue)

<sup>7</sup> Overstock.com Form S-1 (filed on March 5, 2002), <http://www.sec.gov/Archives/edgar/data/1130713/000091205702008668/a2072400zs-1.htm>

<sup>8</sup> Overstock.com 10-Q report for quarter ended June 30, 2002. I subtracted half year totals to compute net loss for quarter ended March 31, 2002. <http://www.sec.gov/Archives/edgar/data/1130713/000091205702032188/a2086930z10-q.htm>

## Attacks on journalists and critics

Journalists who wrote articles about Overstock.com that were disliked by Patrick Byrne were viciously attacked and smeared by him.<sup>9</sup> For example, on November 14, 2005, Fortune Magazine columnist Bethany McLean reported Byrne's disgusting remarks directed at her:<sup>10</sup>

Even in that successful year, there were signs that Byrne was remarkably thin-skinned. In the fall of 2004, I wrote a FORTUNE story titled "Is Overstock the Next Amazon?" After the piece came out, Byrne sent me an e-mail saying "Fair. And balanced." Two days later he wrote another e-mail: "I actually thought it was crap.... So, why exactly did you become a reporter? Giving Goldman traders blowjobs didn't work out?"

In August 2006, Byrne hired Judd Bagley to run an anonymous blog called antisocialmedia.net which was used a platform to smear journalists and bloggers who wrote articles critical of Overstock.com. In January 2007, New York Post reporter Roddy Boyd exposed the charade.<sup>11</sup>

Bagley used anonymous aliases on stock chat boards to attack critics of Byrne. He hacked into the accounts of stock chat board posters and implanted spyware in emails to improperly gain personal information on critics.<sup>12</sup> He attempted to blackmail<sup>13</sup> a tech-savvy blogger who exposed his activities.<sup>14</sup> John Carney from Dealbreaker referred to Judd Bagley as "Sleazy McSleaze."<sup>15</sup>

In April 2007, I was doing research on Bagley's activities and visited antisocialmedia.net multiple times over a couple of days. Bagley used an anonymous alias "panamapump" to post a message on a Yahoo stock chat board detailing every time I visited the blog. He threatened me saying, "On behalf of your family and in the interest of your own employability I ask you to please never visit ASM again. I'll email

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<sup>9</sup> New York Times: Overstock's Campaign of Menace, by Joe Nocera (February 25, 2006), <http://query.nytimes.com/gst/fullpage.html?res=9C00E7D91F3EF936A15751C0A9609C8B63>

<sup>10</sup> Fortune Magazine: Phantom Menace, by Bethany McLean (November 14, 2005), [http://money.cnn.com/magazines/fortune/fortune\\_archive/2005/11/14/8360711/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2005/11/14/8360711/index.htm)

<sup>11</sup> New York Post: Overstock.com Lashes Out at Critics on Web, by Roddy Boyd (January 2, 2007), [http://www.nypost.com/p/news/business/item\\_osBxMU1DxvC2JSu27XOZgl;jsessionid=55BDE1B43DC52D53779ABB62043FF28B](http://www.nypost.com/p/news/business/item_osBxMU1DxvC2JSu27XOZgl;jsessionid=55BDE1B43DC52D53779ABB62043FF28B)

<sup>12</sup> Gary-weiss.com: Cyberstalking, Pretexting: Doesn't Judd Bagley Have Anything Better to Do? By Gary Weiss (January 25, 2008), <http://garyweiss.blogspot.com/2008/01/cyberstalking-pretexting-doesnt-judd.html>

<sup>13</sup> Dealbreaker: Sleazy McSleaze Now Even Sleazier Overstock's Over-Reaching Smells A Little Bit Like Blackmail, by John Carney (June 18, 2007), <http://dealbreaker.com/2007/06/sleazy-mcsleaze-now-even-sleazier-overstock%E2%80%99s-over-reaching-smells-a-little-bit-like-blackmail/>

<sup>14</sup> Gary-weiss.com: Does Overstock.com Have a Board of Directors?, by Gary Weiss (June 18, 2007), <http://garyweiss.blogspot.com/2007/06/does-overstockcom-have-board-of.html>

<sup>15</sup> Dealbreaker: Sleazy McSleaze Admits To Sleaziness, by John Carney (January 12, 2007), <http://dealbreaker.com/2007/01/sleazy-mcsleaze-admits-to-sleaziness/>

you new articles when they come out.” Later, as I uncovered accounting irregularities at Overstock.com, Bagley made good on his threat.

## **Overstock.com violated SEC Regulation G governing non-GAAP pro forma numbers**

On April 23, 2004, Patrick Byrne appeared on CNBC's Kudlow and Cramer show and said “Well, first of all, I’m all about GAAP. I have been so critical of the companies that do—I don’t believe in one-time charges; I don’t believe in EBITDA. If somebody talks EBITDA, put your hand on your wallet; they’re a crook.”<sup>16</sup>

In October 2004, Patrick Byrne bragged, “We don't resort to any pro forma accounting tricks to make the numbers look better.”<sup>17</sup>

In January 2006, Patrick Byrne told Tom Mullaney from Business Week in an email, “...I think 'EBITDA' is the stupidest thing I ever heard emanate from Wall Street (no small feat)....”<sup>18</sup>

Starting in Q2 2007, Overstock.com changed its tune and started using EBITDA in its financial reports, despite Byrne's prior criticism of companies who used that non-GAAP financial measure in their reports. In February 2008, the company even told the SEC that, “A multiple of EBITDA is currently the most standard measure of valuation in the industry.”<sup>19</sup> With that admission in mind, Overstock.com violated SEC rules by using an improper EBITDA calculation that materially overstated its financial performance from Q2 2007 to Q2 2008.

## **How Overstock.com used an improper EBITDA calculation to materially inflate income**

Under Regulation G<sup>20</sup> EBITDA can only be computed<sup>21</sup> by starting with net income or net loss and adding back net interest (interest expense minus interest income), taxes, depreciation, and amortization.

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<sup>16</sup> CNBC: Kudlow and Cramer (April 23, 2004)

<sup>17</sup> Smart Computing (October 2004)

<sup>18</sup> Overstock.com 8-K report (filed on January 13, 2006), [http://www.sec.gov/Archives/edgar/data/1130713/000110465906002014/a06-1260\\_28k.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465906002014/a06-1260_28k.htm) and [http://www.sec.gov/Archives/edgar/data/1130713/000110465906002014/a06-1260\\_2ex99d1.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465906002014/a06-1260_2ex99d1.htm)

<sup>19</sup> Overstock.com response to SEC Division of Corporation Finance comment letter (February 26, 2008), <http://www.sec.gov/Archives/edgar/data/1130713/000110465908013030/filename1.htm>

<sup>20</sup> Final Rule: Conditions for Use of Non-GAAP Financial Measures (Modified: January 14, 2002), <http://www.sec.gov/rules/final/33-8176.htm>

<sup>21</sup> Frequently Asked Questions Regarding the Use of Non-GAAP Financial Measures (Modified: June 13, 2003), <http://www.sec.gov/divisions/corpfin/faqs/nongaapfaq.htm>

On December 3, 2007, I reported how Overstock.com improperly started its EBITDA calculation with operating income or loss (rather than net income or loss) and improperly added back stock-compensation costs.<sup>22</sup> By improperly starting its EBITDA calculation with operating income or loss rather than net income or loss, the company could overstate EBITDA by the amount of losses from discontinued operations. By improperly adding back stock compensation costs to calculate EBITDA, the company could overstate EBITDA by the amount of such costs.

On May 28, 2008, I reported how the SEC Division of Corporation Finance reviewed similar improper EBITDA calculations by two other public companies and made them comply with Regulation G.<sup>23</sup> During this period, I sent multiple emails with links to my blog posts alerting the SEC and Overstock.com about the improper EBITDA calculations.

However, the company defiantly continued to use an improper EBITDA calculation and materially overstated its financial performance. (See the chart below.)

Non-compliant EBITDA reported by Overstock.com (in \$000s)	Quarter ended 06/30/07	Quarter ended 09/30/07	Quarter ended 12/31/07	Quarter ended 03/31/08	Quarter ended 06/30/08
Operating income or (loss)	(13,519)	(4,874)	(4,577)	(4,312)	(6,317)
Add: Depreciation and amortization	7,974	7,080	6,670	6,497	5,887
Stock-based compensation expense	1,137	1,176	1,136	1,184	1,068
Stock-based compensation to consultants for service	135	140	(91)	(14)	329
Stock-based compensation relating to performance shares		350	(900)	150	150
Treasury stock issued to employees as compensation	113	213	(26)	19	0
<b>Non-compliant EBITDA reported by Overstock.com</b>	<b>(4,160)</b>	<b>4,085</b>	<b>2,212</b>	<b>3,524</b>	<b>1,117</b>

  

EBITDA as required by SEC Regulation G (in \$000s)	Quarter ended 06/30/07	Quarter ended 09/30/07	Quarter ended 12/31/07	Quarter ended 03/31/08	Quarter ended 06/30/08
Net income or (loss)	(13,768)	(4,704)	(4,251)	(3,909)	(6,463)
Add: Depreciation and amortization	7,974	7,080	6,670	6,497	5,887
Net Interest (Interest expense minus interest income)	(51)	(262)	(326)	(403)	146
Taxes	0	0	0	0	0
<b>EBITDA as required by SEC Regulation G</b>	<b>(5,845)</b>	<b>2,114</b>	<b>2,093</b>	<b>2,185</b>	<b>(430)</b>

In Q2 2008 (period ended 06/30/08), Overstock.com even reported a positive \$1.117 million EBITDA using its improper calculation instead of a negative \$0.430 million EBITDA had it complied with Regulation G.

<sup>22</sup> White Collar Fraud: Overstock.com and CEO Patrick Byrne: Improper use of EBITDA results in Regulation G Violation, by Sam Antar (December 3, 2007), <http://whitecollarfraud.blogspot.com/2007/12/overstockcom-and-ceo-patrick-byrne.html>

<sup>23</sup> White Collar Fraud: Overstock.com Continues to Violate SEC Regulation G and Materially Overstate EBITDA in Q1 2008, by Sam Antar (May 28, 2008), <http://whitecollarfraud.blogspot.com/2008/05/overstockcom-continues-to-violate-sec.html>

## False statements and personal attacks by Overstock management

During various conference calls, management made false comments in defense of its EBITDA calculations and Byrne personally attacked me.

On July 18, 2008, during the Q2 2008 earnings call, former CFO David Chidester falsely claimed that the company was justified in adding back stock compensation costs to compute EBITDA. He said "It's completely the convention in our industry...."<sup>24</sup>

On October 24, 2008, during the Q3 2008 earnings call, Patrick Byrne falsely asserted that "The claim that EBITDA is not compliant with SEC definition, nonsense." Byrne went on to call me, "Sam Antar the Crook."<sup>25</sup>

## Vindication on reporting violations of Regulation G

On November 7, 2008 Overstock.com filed its Q3 2008 10-Q and disclosed that it discovered errors in its accounting for customer refunds and credits.<sup>26</sup> The company restated financial reports from Q1 2007 to Q2 2008 to correct those errors. It was the second time in two years that Overstock.com had to restate its reports to correct GAAP violations.

In addition, the company finally complied with SEC Regulation G and stopped calling its non-GAAP financial measure (operating income plus stock compensation) EBITDA. It warned investors that it was an "adjusted EBITDA" calculation.

Lee Webb from Stockwatch reported<sup>27</sup>:

"Antar the Crook" was clearly right and "Wacky Patty" was clearly wrong.

On July 26<sup>28</sup> and September 12<sup>29</sup>, 2010, I reported how seven other public companies used improper EBITDA calculations and violated SEC Regulation G. Unlike Overstock.com, those companies corrected

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<sup>24</sup> Overstock.com, Inc. Q2 2008 Earnings Call Transcript (July 18, 2008), <http://seekingalpha.com/article/85766-overstock-com-inc-q2-2008-earnings-call-transcript>

<sup>25</sup> Overstock.com, Inc. Q3 2008 Earnings Call Transcript (October 24, 2008), <http://seekingalpha.com/article/101839-overstock-com-inc-q3-2008-earnings-call-transcript>

<sup>26</sup> Overstock.com 10-Q report for the quarter ended September 30, 2008, [http://www.sec.gov/Archives/edgar/data/1130713/000110465908069355/a08-27921\\_410q.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465908069355/a08-27921_410q.htm)

<sup>27</sup> StockWatch: Overstock.com faces another shoddy accounting challenge, by Lee Webb (February 20, 2009), [http://www.stockwatch.com/newsit/newsit\\_newsit.aspx?bid=U-s0127742-U:OSTK-20090220](http://www.stockwatch.com/newsit/newsit_newsit.aspx?bid=U-s0127742-U:OSTK-20090220)

<sup>28</sup> White Collar Fraud: Penson Worldwide and Comtech Telecommunications Need to Learn How to Properly Calculate EBITDA under SEC Rules, by Sam Antar (July 26, 2010), <http://whitecollarfraud.blogspot.com/2010/07/penson-worldwide-and-comtech.html>



their improper EBITDA calculations in their very next financial report and did not attack me for pointing it out.

## Overstock.com violated GAAP

On January 30, 2009, Overstock.com reported a fourth quarter 2008 net profit of \$1 million dollars.<sup>30</sup> Patrick Byrne proudly told investors, "After a tough three years, returning to GAAP profitability is a relief. However, Overstock.com's "returning to GAAP profitability" was simply accomplished by the company violating GAAP through its failure to restate prior period financial reports effected by a certain accounting error. Had Overstock.com properly followed accounting rules, it would have reported an \$800,000 loss instead of a \$1 million profit.

During the Q4 2008 earnings call<sup>31</sup>, the new Overstock.com CFO Steve Chesnut, who recently replaced David Chidester, told investors:

Gross profit dollars were \$43.6 million, a 6% decrease. This included a one-time gain of \$1.8 million relating to payments from partners who were under-billed earlier in the year.

In February 4, 2009, I detailed how Overstock.com violated GAAP and materially overstated its earnings in Q4 2008<sup>32</sup>:

That "one-time gain of \$1.8 million" referred to above by CFO Steve Chesnut was actually an improper one-time cumulative adjustment of an accounting error.

According to Statement of Financial Accounting Standards No. 154<sup>33</sup> and SEC Staff Accounting Bulletin No. 99<sup>34</sup>, Overstock.com should have restated all prior accounting periods, rather than use a "one-time gain" to correct its accounting errors "relating to payments from partners who were under-billed earlier in the year."

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<sup>29</sup> White Collar Fraud: Five More Public Companies Who Need to Learn How to Properly Calculate EBITDA under SEC Rules, by Sam Antar (September 12, 2010), <http://whitecollarfraud.blogspot.com/2010/09/five-more-public-companies-who-need-to.html>

<sup>30</sup> Overstock.com Press Release: Overstock.com Reports Fourth Quarter and Fiscal Year 2008 Financial Results (January 30, 2009), [http://sec.gov/Archives/edgar/data/1130713/000110465909005186/a09-4158\\_1ex99d1.htm](http://sec.gov/Archives/edgar/data/1130713/000110465909005186/a09-4158_1ex99d1.htm)

<sup>31</sup> Overstock.com, Inc. Q4 2008 Earnings Call Transcript (January 30, 2009), <http://seekingalpha.com/article/117743-overstock-com-inc-q4-2008-earnings-call-transcript?page=-1>

<sup>32</sup> White Collar Fraud: Overstock.com and CEO Patrick Byrne Violate Accounting Rules in Q4 2008 Financial Report, by Sam Antar (February 4, 2009), <http://whitecollarfraud.blogspot.com/2009/02/overstockcom-and-ceo-patrick-byrne.html>

<sup>33</sup> Financial Accounting Standard Board: Statement of Financial Accounting Standards No. 154 – Accounting Changes and Error Corrections (May 2005), <http://www.fasb.org/pdf/fas154.pdf>

<sup>34</sup> Securities and Exchange Commission: Staff Accounting Bulletin No. 99 – Materiality (Modified: August 13, 1999), <http://www.404.gov/interps/account/sab99.htm>

Under GAAP, we are required to use an accrual basis of accounting. Income is recognized when it is earned and not when it is later billed or when amounts are collected. The “one-time gain of \$1.8 million relating to payments from partners who were under-billed earlier in the year” was earned before Q4 2008 and should have been recognized in prior periods. Since the accounting error is material under SAB No. 99, Overstock.com is required to restate prior period financial reports under SFAS No. 154 and cannot use a “one-time gain” to correct its error.

As a result of violating SFAS No. 154 and SAB No. 99, Overstock.com improperly reported a Q4 2008 net profit of \$1 million, instead of an \$800,000 net loss.

According to SFAS No. 154 paragraph 25:

Any error in the financial statements of a prior period discovered subsequent to their issuance shall be reported as a prior-period adjustment by restating the prior-period financial statements.

Among the criteria that SAB No. 99 uses to define a material accounting error that requires a restatement of prior period financial reports are:

- whether the misstatement masks a change in earnings or other trends
- whether the misstatement hides a failure to meet analysts' consensus expectations for the enterprise
- whether the misstatement changes a loss into income or vice versa

Overstock.com’s accounting error met in all three materiality criteria above and the company should have restated its prior financial reports, rather than use a one-time gain to correct its accounting error in Q4 2008.

I immediately notified the SEC and Overstock.com about its GAAP violations and urged the company to restate its financial reports to correct its illegal accounting practices. However, Overstock.com continued to violate GAAP and materially overstate its earnings from Q1 to Q3 2009 by improperly reporting recoveries from its underbilled fulfillment partners as income.

Back in October 2008, Overstock.com discovered errors in accounting for customer refunds and credits.<sup>35</sup> The company restated its financial reports from Q1 2007 to Q2 2008 and reduced its retained earnings by 8.2 million to correct those errors due to its overstatement of income during those periods.

It also underbilled its fulfillment partners certain offsetting fees and reimbursements due the company arising from those errors. However, Overstock.com’s restatement of financial reports did not properly reflect adjustments for income that it already earned from those offsetting costs and reimbursements during those periods.

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<sup>35</sup> Overstock.com 10-Q report for the quarter ended September 30, 2008, [http://www.sec.gov/Archives/edgar/data/1130713/000110465908069355/a08-27921\\_410q.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465908069355/a08-27921_410q.htm)

Public companies are required to use accrual basis accounting. Income is recognized in the period it is earned and not when it is later billed or when amounts are subsequently collected. Instead, the company recorded income as payments were received from its fulfillment partners on a non-GAAP cash basis in future accounting periods (Q4 2008 to Q3 2009).

In other words, Overstock.com took income that should have been reported in prior reporting periods (Q2 2008 and before) and moved it to future reporting periods (Q4 2008 and later) to materially overstate its financial performance in those later reporting periods. The company effectively created a "cookie jar" reserve to inflate future earnings.

## Patrick Byrne responds

On February 6, 2009, Patrick Byrne responded to my initial accounting analysis with his usual vindictive attack on the InvestorVillage message board.<sup>36</sup> He claimed that "Antar's ramblings are gibberish. Show them to any accountant and they will confirm. He has no clue what he is talking about."

Further, Byrne tried to justify Overstock.com's accounting for recoveries of underbillings to its fulfillment partners:

For example: when one discovers that one underpaid some suppliers \$1 million and overpaid others \$1 million. For those whom one underpaid, one immediately recognizes a \$1 million liability, and cleans it up by paying. For those one overpaid, one does not immediately book an asset of a \$1 million receivable: instead, one books that as the monies flow in. Simple conservatism demands this (If we went to book the asset the moment we found it, how much should we book? The whole \$1 million? An estimate of the portion of it we think we'll be able to collect?) The result is asymmetric treatment. Yet Antar is screaming his head off about this, while never once addressing this simple principle. Of course, if we had booked the found asset the moment we found it, he would have screamed his head off about that. Behind everything this guy writes, there is a gross obfuscation like this. His purpose is just to get as much noise out there as he can.

On February 9, 2009, I responded to Byrne's remarks<sup>37</sup> :

No matter what boloney Byrne said above, Overstock.com simply had a material accounting error that required the restatement of effected prior period financial reports.

...Patrick Byrne... tried to make excuses for Overstock.com's decision to correct its accounting errors by claiming that "conservatism demands" waiting until "monies flow in" from under-billed fulfillment partners, after such an error is discovered by the company. That is improper cash-basis accounting for a public company and does not address the restatement issue. In any case,

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<sup>36</sup> InvestorVillage: OSTK msg # 3095 12/6/2009 10:17:22 PM by Hannibal. Patrick Byrne uses the alias Hannibal when he posts comments on the InvestorVillage message board.  
<http://www.whitecollarfraud.com/files/34310038.pdf>

<sup>37</sup> White Collar Fraud: Overstock.com Refuses to Correct GAAP Violations in Latest Financial Report, by Sam Antar (February 9, 2009), <http://whitecollarfraud.blogspot.com/2009/02/overstockcom-refuses-to-correct-gaap.html>

Overstock.com is required to restate all prior period financial reports affected by its accounting error.

That same day, forensic accountant and accounting book author Tracy Coenen took issue with Byrne's remarks in her [blog](#)<sup>38</sup>:

In Overstock's case, the items at issue were earned and realizable in prior quarters, not in the 4th quarter. The fact that the company is clueless and underbilled partners changes neither of those.

If you find items in months, quarters, or years after they should have been booked, the only proper way to record them under accrual basis accounting rules would be to go back and restate the prior period financial statement.

## Retaliation by Byrne

In April 2009, Patrick Byrne sent his hired thug Judd Bagley to inject himself into my divorce proceedings and contact my former spouse.<sup>39</sup> Bagley used an anonymous alias on a Yahoo stock chat board, which he later acknowledged was his, to threaten me saying, "Here's some advice: settle the suit... give her whatever she wants. Because if it goes to trial, I'll probably attend."<sup>40</sup> He used illegal pretexting tactics to "friend" my children and relatives on Facebook using a phony account. This was clear retaliation for my pointing out the company's accounting violations.

Overstock.com's pretexting operation also targeted journalists, bloggers, their families, and even minor children, too.<sup>41 42</sup> Altogether, Patrick Byrne compiled a database of information on over 7,400 people.<sup>43</sup> Judd Bagley claimed that Overstock's internet pretexting scheme was designed to unveil connections

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<sup>38</sup> Fraud Files Blog: More accounting mistreatment by Overstock.com (NASDAQ:OSTK) and CEO Patrick Byrne, by Tracy Coenen (February 9, 2009), <http://www.sequenceinc.com/fraudfiles/2009/02/accounting-mistreatment-by-overstock/>

<sup>39</sup> White Collar Fraud: Don't criticize Overstock.com and Patrick Byrne, especially if you are going through a divorce, by Sam Antar (April 16, 2009), <http://whitecollarfraud.blogspot.com/2009/04/dont-criticize-overstockcom-and-patrick.html>

<sup>40</sup> Portfolio: The Whisper Campaign Against an Overstock.com Whistleblower, by Gary Weiss (April 17, 2009), <http://www.portfolio.com/views/blogs/the-weiss-file/2009/04/17/the-whisper-campaign-against-an-overstockcom-whistleblower>

<sup>41</sup> gary-weiss.com: Patrick Byrne's Facebook Pretexting Lasted Seven Months, by Gary Weiss (December 16, 2009), <http://garyweiss.blogspot.com/2009/12/patrick-byrnes-facebook-pretexting.html>

<sup>42</sup> The Big Picture DeepCapture.com Scraping Facebook Friends, by Barry Ritholtz (December 9, 2009), <http://www.ritholtz.com/blog/2009/12/deepcapture-com-scraping-facebook-friends/>

<sup>43</sup> Business Insider: Patrick Byrne's DeepCapture Is Keeping A Database Of Unfriendly Journalists And Their Facebook Friends, by Joe Weisenthal (December 10, 2009), <http://www.businessinsider.com/jeff-byrnes-deepcapture-is-keeping-a-database-of-unfriendly-journalists-and-their-facebook-friends-2009-12>

between hedge funds and the journalists who write about them. However, Bagley targeted only journalists and bloggers (and their friends and family members thereof) who had written about Overstock.

According to journalist and author Gary Weiss who uncovered the [pretexting](#)<sup>44</sup>:

Bagley created "Larry Bergman" and an unknown number of phony Facebook accounts to con people into "friending" him. That way he could circumvent Facebook security, violating their rules and, well, Lord knows how many laws he broke in this pretexting scheme.

Attorney and Big Picture blogger (over 1.5 million monthly readers) Barry Ritholtz called Judd Bagley a "possible pedarast" after learning that he and his family members were pretexted.<sup>45</sup> Eventually, Facebook (NASDAQ: FB) booted Bagley for violating its rules. It deleted both his false "Larry Bergman" profile and his personal profile.

### **New excuse: A “gain contingency” existed**

On February 23, 2009, Overstock.com filed its 2008 10-K report and for the first time claimed that a "gain contingency" existed to justify its accounting practices.<sup>46</sup> It said that, "When the underbilling was originally discovered, we determined that the recovery of such amounts was not assured, and that consequently the potential recoveries constituted a gain contingency."

### **Questioning Overstock.com's “gain contingency” claim**

On May 4, 2009, I cited various accounting rules<sup>47</sup> and pointed out<sup>48</sup> that "No gain contingency existed." Overstock.com had made the ridiculous assumption that all potential recoveries of underbilled fees and reimbursements owed to it from fulfillment partners (every single penny) were not assured.

I noted that the company did not mention the existence of a "gain contingency" when it originally disclosed the underbilling error in its Q3 2008 10-Q report filed in November 2008. It waited until it filed its annual 2008 10-K report in February 2009 to claim that a gain contingency existed.

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<sup>44</sup> gary-weiss.com: How Patrick Byrne Stalked Critics and the Media on Facebook, by Gary Weiss (December 11, 2009), <http://garyweiss.blogspot.com/2009/12/how-patrick-byrne-stalked-critics-and.html>

<sup>45</sup> The Big Picture: Is Patrick Byrne America's Nastiest Dumbest CEO?, by Barry Ritholtz (January 19, 2010), <http://www.ritholtz.com/blog/2010/01/why-is-patrick-byrne-the-dumbest-ceo/>

<sup>46</sup> Overstock.com 10-K report for year ended December 31, 2009, [http://www.sec.gov/Archives/edgar/data/1130713/000110465909011509/a09-1672\\_110k.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465909011509/a09-1672_110k.htm)

<sup>47</sup> Financial Accounting Standards Board: Statement of Financial Accounting Standards No. 154 – Accounting Changes and Error Corrections and Statement of Financial Accounting Standards No. 5 – Accounting for Contingencies

<sup>48</sup> White Collar Fraud: Overstock.com's First Quarter Financial Performance Aided by GAAP Violations, by Sam Antar (May 4, 2009), <http://whitecollarfraud.blogspot.com/2009/05/overstockcoms-first-quarter-financial.html>

On July 22, 2009, during the Q2 2009 earnings call<sup>49</sup>, Patrick Byrne called me “Sam Antar the Crook” because I questioned his company’s claim that a “gain contingency” really existed.<sup>50</sup>

On August 5, 2009, I published an open letter to the Securities and Exchange Commission urging the regulator to take action to stop continuing GAAP violations and material overstatements of earnings by Overstock.com.<sup>51</sup> The company continued to violate GAAP and materially overstate its earnings in Q1 and Q2 2009 by improperly reporting recoveries from its underbilled fulfillment partners as income.

I pointed out how Overstock.com used its phony gain contingency rationale to further inflate its reported earnings in Q1 and Q2 2009. During 2009, the company discovered overbillings from vendors that occurred in 2008. When it corrected the 2008 overbillings from vendors in 2009, it further inflated its reported income. It should have adjusted its 2008 financial reports to correct those errors.

## SEC investigates

On September 17, 2009, the SEC Enforcement Division started an investigation Overstock.com.<sup>52</sup>

On September 23, 2009, a Salt Lake Tribune article<sup>53</sup> reported Patrick Byrne’s angry reaction with anti-Semitic overtones:

"Gary Weiss and Sam Antar are goniffs," Byrne declared, using a yiddish term that he says means "a con man, a hustler and a scoundrel." If the SEC is listening to them, their next step is to let Bernie Madoff write their indictment of me.

Best-selling author and investigative reporter Gary Weiss had exposed Patrick Byrne’s past dirty trick tactics against critics.<sup>54</sup> Both Gary Weiss and I are Jewish.

In October 2009, Aaron Edelstein from Crain’s New York Business asked Patrick Byrne about my reporting of accounting irregularities. Byrne responded saying “He’s a criminal who works for short-

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<sup>49</sup> Overstock.com, Inc. Q2 2009 Earnings Call Transcript (July 22, 2009), <http://seekingalpha.com/article/150637-overstock-com-inc-q2-2009-earnings-call-transcript>

<sup>50</sup> White Collar Fraud: Overstock.com's First Quarter Financial Performance Aided by GAAP Violations, by Sam Antar (May 4, 2009), <http://whitecollarfraud.blogspot.com/2009/05/overstockcoms-first-quarter-financial.html>

<sup>51</sup> White Collar Fraud: Open Letter to the Securities and Exchange Commission: Stop Overstock.com GAAP Violations Now!, by Sam Antar, <http://whitecollarfraud.blogspot.com/2009/08/open-letter-to-securities-and-exchange.html>

<sup>52</sup> Overstock.com Press Release: Overstock.com Announces Receipt of Another SEC Subpoena (September 17, 2009), [http://sec.gov/Archives/edgar/data/1130713/000110465909055061/a09-26815\\_1ex99d1.htm](http://sec.gov/Archives/edgar/data/1130713/000110465909055061/a09-26815_1ex99d1.htm)

<sup>53</sup> Salt Lake Tribune: Overstock CEO and his critics differ over SEC probe, by John Keahey (September 23, 2009), [http://www.sltrib.com/business/ci\\_13405603](http://www.sltrib.com/business/ci_13405603)

<sup>54</sup> Gary-weiss.com: It's Official: Patrick Byrne Admits Owning Smear Sites, by Gary Weiss (March 15, 2009), <http://garyweiss.blogspot.com/2009/03/its-official-patrick-byrne-admits.html>

sellers. He throws mud day after day. No matter what he says, he finds some spurious thing to jump up and down about."<sup>55</sup>

On October 1, 2009, the SEC Division of Corporation Finance started reviewing Overstock.com's financial reports.<sup>56</sup> It discovered that the company overpaid a fulfillment partner \$785,000 during 2008.<sup>57</sup> The company recovered that overpayment in Q1 2009 and improperly reported the overpayment recovery as income in that same quarter, rather than properly restate its 2008 financial reports to correct that error.

Grant Thornton, who replaced PricewaterhouseCoopers as Overstock.com's auditors in 2009, claimed that it did not know about the 2008 overpayment and the Q1 2009 recovery from the fulfillment partner until October 2009.<sup>58</sup> The SEC wanted Overstock.com to restate its financial reports to correct that error and other GAAP violations previously identified in my blog. Grant Thornton agreed.

The SEC reviewers also wanted to know why Overstock.com failed to report the existence of a gain contingency when it originally disclosed the underbilling error in its Q3 2008 10-Q report filed on November 7, 2008.<sup>59</sup> The company waited until it filed its 2008 10-K report on February 23, 2009 to claim that a gain contingency existed.

Overstock.com told the SEC that as of November 2008 "...it would have been inappropriate to disclose a gain contingency."<sup>60</sup> However, in the 10-K report, Overstock.com claimed that it determined that a gain contingency existed "When the underbilling was originally discovered...." back on October 24, 2008.

If Overstock.com's 10-K disclosure was true, the company's explanation to the SEC could not be true. Likewise, if Overstock.com's explanation to the SEC was true, the company's 2008 10-K disclosure can't be true. Nevertheless, the SEC determined that no gain contingency existed, as I did my August letter.<sup>61</sup>

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<sup>55</sup> Crain's New York Business: Crazy Like a Fox - Guess who's tipping off the SEC on alleged accounting frauds? None other than the guy who cooked the books at Crazy Eddie, by Aaron Elstein (October 5, 2009), <http://www.crainnewyork.com/assets/pdf/CN67159104.PDF>

<sup>56</sup> Securities and Exchange Commission Division of Corporation Finance comment letter to Overstock.com (October 1, 2009), <http://www.sec.gov/Archives/edgar/data/1130713/000000000009055608/filename1.pdf>

<sup>57</sup> White Collar Fraud: Open Letter to the Securities and Exchange Commission Part 2: New Information on Overstock.com's GAAP and SEC Disclosure Violations, by Sam Antar (November 22, 2009) <http://whitecollarfraud.blogspot.com/2009/11/open-letter-to-securities-and-exchange.html>

<sup>58</sup> Going Concern: Grant Thornton: Patrick Byrne's Pants Are on Fire, by Caleb Newquist (November 24, 2009) <http://goingconcern.com/2009/11/grant-thornton-patrick-byrnes-pants-are-on-fire/>

<sup>59</sup> Securities and Exchange Commission Division of Corporation Finance comment letter to Overstock.com (October 1, 2009), <http://www.sec.gov/Archives/edgar/data/1130713/000000000009055608/filename1.pdf>

<sup>60</sup> Overstock.com response to SEC Division of Corporation Finance Comment Letter (October 20, 2009) <http://sec.gov/Archives/edgar/data/1130713/000110465909059752/filename1.htm>



On November 13, 2009, Overstock.com fired Grant Thornton rather than restate its financial reports.<sup>62</sup> Three days later, Overstock.com defiantly<sup>63</sup> issued an “unreviewed” Q3 2008 10-Q<sup>64</sup> report without correcting its GAAP violations.

On November 18, 2009, during a conference call with analysts, Patrick Byrne falsely claimed that even if the company had restated its financial reports, no previously reported profit would turn into a loss. Byrne said, “In fact, we as I understand it, this doesn't change any positive quarter to a negative quarter or any negative quarter to a positive quarter.”<sup>65</sup>

On November 24, 2009, the Salt Lake Tribune reported that Company President Jonathan Johnson said, “None of these changes that they [Grant Thornton] are talking about, or that people at the SEC are now asking about, make any of our quarters go from negative to positive or from positive to negative.”<sup>66</sup>

## Vindication on reporting GAAP violations

On December 29, 2009, Overstock.com hired KPMG to replace Grant Thornton.<sup>67</sup> On January 29, 2010, Overstock.com warned investors that its financial reports “.... should no longer be relied upon.”<sup>68</sup>

On March 31, 2010, Overstock.com filed its 2009 10-K<sup>69</sup> report and finally restated its financial reports to correct GAAP violations, as I recommended back in February 2009. The company also admitted that the “gain contingency...was an inappropriate accounting treatment.”

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<sup>61</sup> White Collar Fraud: Open Letter to the Securities and Exchange Commission: Stop Overstock.com GAAP Violations Now!, by Sam Antar, <http://whitecollarfraud.blogspot.com/2009/08/open-letter-to-securities-and-exchange.html>

<sup>62</sup> Overstock.com 8-K report (filed: November 13, 2009), [http://www.sec.gov/Archives/edgar/data/1130713/000110465909065308/a09-31176\\_48k.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465909065308/a09-31176_48k.htm)

<sup>63</sup> Business Insider: Overstock's Fired Accounting Firm Says Overstock Is Lying, by Henry Blodget (November 24, 2009), <http://www.businessinsider.com/henry-blodget-overstocks-fired-accounting-firm-says-overstock-is-lying-about-everything-2009-11>

<sup>64</sup> Overstock.com 10-Q report for the period ended September 30, 2009, [http://www.sec.gov/Archives/edgar/data/1130713/000110465909065304/a09-31176\\_110q.htm](http://www.sec.gov/Archives/edgar/data/1130713/000110465909065304/a09-31176_110q.htm)

<sup>65</sup> Overstock.com, Inc. Q3 2009 Earnings Call Transcript (November 18, 2009), <http://www.whitecollarfraud.com/files/36959173.pdf>

<sup>66</sup> Salt Lake Tribune: Overstock's dispute with former auditor heats up, by Steven Oberbeck (November 24, 2009), [http://www.sltrib.com/business/ci\\_13861308](http://www.sltrib.com/business/ci_13861308)

<sup>67</sup> Reuters: UPDATE 1-Overstock retains KPMG after firing prior auditor (December 29, 2009), <http://www.reuters.com/article/2009/12/29/overstock-auditor-idCNN2919902920091229?rpc=44>

<sup>68</sup> Overstock.com Form 8-K report (January 29, 2009), [http://sec.gov/Archives/edgar/data/1130713/000110465910004982/a10-3110\\_18k.htm](http://sec.gov/Archives/edgar/data/1130713/000110465910004982/a10-3110_18k.htm)



See the chart below detailing restatements.

Overstock.com adjustments due to GAAP violations	Quarter ended 12/31/08	Quarter ended 03/31/09	Quarter ended 06/30/09	Quarter ended 09/30/09
Net income or (loss) originally reported by Overstock.com	1,014	(2,099)	389	(787)
Less: Adjustments due to GAAP violations	(1,719)	(1,856)	(70)	(592)
Net income or (loss) after restatement to correct GAAP violations	(705)	(3,955)	319	(1,379)

In his book, "Selling America Short" author Richard Sauer noted<sup>70</sup>:

This dispute did not end happily for Byrne. KPMG sided with ex-felon Antar. In early February 2010, Overstock announced that its financial statements for the period at issue should no longer be relied upon by anyone who might otherwise have considered doing so, pending their restatement. The result is that the company will now have restated at least once for every fiscal period since becoming a public company.

As it turns out, every comment made by Patrick Byrne and Jonathan Johnson in defense of Overstock.com's accounting policies were false. There was no gain contingency as previously claimed by Overstock.com. The company actually lost money in Q4 2008, rather than make a profit as it previously claimed. It overstated its reporting earnings from Q4 2008 to Q3 2009, as I correctly reported.

Back in February 2009, Byrne said "Antar's ramblings are gibberish. Show them to any accountant and they will confirm. He has no clue what he is talking about." The "gibberish" was Overstock.com's illegal accounting practices and Byrne's ramblings in defense of his company's accounting shenanigans. I knew exactly what I was talking about.

In March 2010, I sought out an apology from Patrick Byrne, but none came. Instead, he continued his vindictive campaign of retaliation against me.<sup>71</sup>

## Continued retaliation

In November 2010, District Attorneys from seven California counties filed a lawsuit alleging consumer fraud by Overstock.com.<sup>72</sup> On April 12, 2011, I reported how the DAs complained to the court that

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<sup>69</sup> Overstock.com 10-K Report for the year ended December 31, 2009 (March 31, 2010), <http://www.sec.gov/Archives/edgar/data/1130713/000104746910003040/a2197694z10-k.htm>

<sup>70</sup> Wiley: Selling America Short: The SEC and Market Contrarians in the Age of Absurdity, by Richard Sauer (2010), <http://www.wiley.com/WileyCDA/WileyTitle/productCd-0470582111.html>

<sup>71</sup> Going Concern: Three Ways That Patrick Byrne Can Apologize to Sam Antar, by Adrienne Gonzalez (March 11, 2011), <http://goingconcern.com/2010/03/three-ways-that-patrick-byrne-can-apologize-to-sam-antar/>

Overstock.com was withholding personal contact information of former employees with possible knowledge of wrongdoing.<sup>73</sup> That day, a Bloomberg reporter asked Patrick Byrne about the issue and he went on a disgusting rampage in his Deep Capture website<sup>74 75</sup> :

The sounds of squealing could be heard over the low hum of the air recirculation machinery in the drab, windowless federal interview room. "Please!" Sam Antar wimpered. "Let me write one more smear. Let me feel like I'm a player, one last time!"

The federal agent spoke sharply: "Silence!" She turned to look at her colleagues with bemusement. "Jesus, what is it with these finance gerbils? I haven't seen someone break this pitifully since that bookkeeper in Reno." She set aside her Nutcracker Flail, took a long pull on her Gaulioses, and said, "OK, let's give Sam the night off. We'll get him cleaned up for the judge in the morning."

With that, Sam Antar, still restrained in straightjacket, was hauled back to the Shower Room, where he spent the night toe-writing in excrement on the linoleum.

Which would be altogether unremarkable, were it not for the fact that within hours, a Bloomberg reporter named Clyde Eltzrothis called, asking me to comment on it.

Patrick Byrne went on to accuse the California District Attorneys of not acting in good faith:

It is not our job to host DA's on a no-limits fishing trip, especially when they have not acted in good faith in the past.

On May 18, 2011, Judge Robert B. Freeman granted the California District Attorney's motion to compel Overstock.com to turn over the contact information of certain former employees.<sup>76</sup> He rejected Byrne's

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<sup>72</sup> White Collar Fraud: California District Attorneys Sue Overstock.com for Defrauding Consumers While the SEC Finds New Disclosure Problems, by Sam Antar (November 23, 2010), <http://whitecollarfraud.blogspot.com/2010/11/california-district-attorneys-sue.html>

<sup>73</sup> White Collar Fraud: Why is Overstock.com obstructing California District Attorney's investigation into allegations of consumer fraud?, by Sam Antar, <http://whitecollarfraud.blogspot.com/2011/04/why-is-overstockcom-obstructing.html>

<sup>74</sup> Deep Capture: A New Party Heard From: Clyde Eltzroth, Bloomberg (Updated), by Patrick Byrne (April 12, 2011), <http://www.deepcapture.com/a-new-party-heard-from-clyde-eltzroth-bloomberg/>

<sup>75</sup> White Collar Fraud: Open Letter to KPMG: The Ties That Bind Overstock.com and Patrick Byrne With Deep Capture LLC, by Sam Antar (January 27, 2010), <http://whitecollarfraud.blogspot.com/2010/01/open-letter-to-kpmg-ties-that-bind.html>

<sup>76</sup> People of State of California vs. Overstock.com, Inc.: Motion to Compel (Motion) Granted (May 17, 2011), <http://www.whitecollarfraud.com/files/44163002.pdf>

argument.<sup>77</sup>

## **No good faith attempt to follow accounting rules**

Overstock.com cannot deny that it violated various accounting rules. My accounting analysis was proven correct by its later revisions of financial reports. To avoid an enforcement action and possible sanctions, the company has no choice but to attempt to persuade the SEC that it acted in good faith and its misstatements of financial reports were unintentional. That excuse is simply untrue in light of the company's actions.

My accounting analysis was proven correct by its later revisions of financial reports. To avoid an enforcement action and possible sanctions, the company has no choice but to attempt to persuade the SEC that it acted in good faith and its misstatements of financial reports were unintentional. That excuse is simply untrue in light of the company's actions.

Responsible companies that act in "good faith" fix their accounting errors and move on. They don't retaliate against whistleblowers who point out misstatements in financial reports. Patrick Byrne didn't seem to be upset that Overstock.com violated accounting rules and had to restate its financial reports. Apparently, he was upset because his company's accounting irregularities were exposed.

Byrne's disgusting prison fantasy involving me demonstrates his obsession to get back at me for pointing out his company's shenanigans. Byrne and his crew will make up anything and resort to any smear tactic in their attempts to punish me for uncovering their wrongdoing. But the fact remains that I uncovered violations of accounting rules which helped Overstock.com overstate its financial performance and the company made revisions in its financial reporting to correct those violations.

If the company and its auditors want to claim they acted in good faith, it follows that this convicted felon and former CPA has more knowledge about SEC reporting rules and GAAP than any of them. I guess that I must be an accounting genius. I was able to find accounting irregularities missed by PricewaterhouseCoopers and Grant Thornton (the third and sixth largest accounting firms in the world) who unlike me, had access to the company's books and records. PricewaterhouseCoopers was Overstock.com's auditors from 1999 to 2008 and Grant Thornton was its auditors from Q1 to Q3 2009.

Further, the Sarbanes-Oxley Act of 2002 eliminates the excuse that a company relied on the erroneous advice of its auditors. It clearly places the primary responsibility for poor internal controls and improper financial reporting on management.<sup>78</sup>

Overstock.com has so far restated its financial reports three times due to GAAP violations. Every single financial report from 1999 to Q3 2009 had to be revised from one to three times due to GAAP violations.

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<sup>77</sup> White Collar Fraud: California Court Compels Overstock.com to Turn Over Contact Information of Former Employees to District Attorney Investigating Consumer Fraud, by Sam Antar (May 19, 2011), <http://whitecollarfraud.blogspot.com/2011/05/california-court-compels-overstockcom.html>

<sup>78</sup> Securities and Exchange Commission: Final Rule: Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports (Modified: August 8, 2008), <http://www.sec.gov/rules/final/33-8238.htm>

Every single internal control certification signed by the CEO and CFO of the company during that period turned out to be false. Every single audit by PricewaterhouseCoopers from 1999 to 2008 and review by Grant Thornton in 2009 turned out to be flawed.

## **Dodd-Frank protection for whistleblowers**

Last year, the Dodd-Frank Act was signed into law and the SEC issued final regulations about whistleblower protections. On May 25, 2011, SEC Chairman Mary Schapiro said in a speech that, "... the final rules make clear that the statute's whistleblower protections apply to anyone who provides us information, even if that information relates to a possible securities law violation, and regardless of whether it leads to a successful enforcement action."<sup>79</sup>

Here, the SEC has a whistleblower that correctly identified accounting violations which caused a public company to restate its financial reports. The SEC has clear evidence of blatant retaliation by the issuer against that whistleblower. The freedom to criticize accounting practices without fear of reprisal from public companies is essential to our democracy and the integrity of our capital markets.

Written by,

Sam E. Antar

Disclosure: I don't own any Overstock securities long or short.

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<sup>79</sup> Securities and Exchange Commission: Speech by SEC Chairman: Opening Statement at SEC Open Meeting: Item 2 — Whistleblower Program (May 25, 2011), <http://www.sec.gov/news/speech/2011/spch052511mls-item2.htm>