

Investment Stewardship Group

Voting bulletin

As part of our fiduciary duty, BlackRock’s Investment Stewardship team (BIS) advocates for sound corporate governance and business practices that are aligned with long-term sustainable financial performance. This objective underpins all our engagements and votes at company meetings.

We engage company leadership on key topics emphasizing governance practices including management of environmental, social, and governance factors that potentially have material economic, operational or reputational ramifications for the company. The BIS team’s key engagement priorities include:

1. Board Quality
2. Environmental risks and opportunities
3. Corporate Strategy and Capital Allocation
4. Compensation that promotes long-termism
5. Human capital management

We are committed to enhancing the transparency of our stewardship practices. Where we believe it will help to understand our voting decisions at shareholder meetings, we will publish a Voting Bulletin explaining the rationale for how we have voted, and (where relevant) providing information around our engagement with the issuer.

These Voting Bulletins are made public on, or shortly after, the day of the meeting.

Company	Overstock.com Inc.
Meeting Date	13th February 2020
Resolutions	Multiple
Board recommendation	In favor
BlackRock Vote	BIS voted against all management proposals

Overview

Overstock.com Inc. is an online retailer and technology company based in Salt Lake City, Utah. Its leading e-commerce website sells a broad range of home products. Overstock was the first major retailer to accept cryptocurrency in 2014, and in the same year founded Medici Ventures, its wholly owned subsidiary dedicated to the development and acceleration of blockchain technologies.

BIS regularly reviews Overstock’s governance structure and risk profile. In prior engagements with the company’s board and management, we have discussed a range of material issues driving long-term shareholder value, including corporate strategy, capital allocation, management changes, board diversity and refreshment.

Digital Dividend

In July 2019, Overstock's Board of Directors declared a digital dividend with a record date of September 23, 2019 and distribution date of November 15, 2019, without putting it to a shareholder vote. This digital dividend would be distributed via Overstock's blockchain technology, exclusively accessible through tZERO (a subsidiary of Medici Ventures). After regulators, custodians and various shareholders including BlackRock expressed concerns about the mechanics of the digital dividend, the company announced in October 2019 that they would seek shareholder approval of the digital dividend.

After filing their proxy statement in December 2019 with respect to the special shareholders meeting, we engaged Overstock's board and management again.

Rationale for BlackRock vote

The agenda items for the Special Meeting, and upon which BlackRock voted, were:

1. Approve and adopt the amendments to the Company's Certificate of Designation of Digital Voting Series A-1 Preferred Stock
2. Approve and adopt the amendment to the Company's Certificate of Designation of Voting Series B Preferred Stock
3. Approve and adopt the amendments to the Series A-1 Certificate of Designation (Alternative Series A-1 Preferred)
4. Approve and adopt the amendment to Series A-1 Certificate of Designation (amend voting rights)
5. Approve and adopt the amendment to Series B Certificate of Designation (amend voting rights)

Although the company modified some of the terms, the fundamental issues we had with the mechanism itself were not addressed. **We decided not to support the digital dividend, and the related capital structure proposals, given a number of operational challenges that would inhibit our ability to adequately execute our fiduciary duty to our clients.**

1. Limited trading platform: Series A-1 Preferred Stock distributed as dividend shares may, subject to certain exceptions, only be sold through the alternative trading system (ATS) operated by tZERO ATS.
2. Limited broker dealers: In order to trade/sell the Series A-1 Preferred Stock, one must open an account with an ATS-subscribing broker-dealer (which currently only includes Dinosaur Financial Group as broker-dealer or with a broker-dealer that itself maintains an account with a SEC and FINRA regulated ATS-subscribing broker-dealer).
3. Custody concerns: Assuming we would be able to open accounts at an ATS-subscribing broker-dealer, we are also concerned operationally that there may be custody risk for certain accounts when the Series A-1 shares are held at any of the ATS-subscribing broker-dealers. It's unclear if the Depository Trust Company (DTC) safeguards apply once the securities are transferred to the ATS-subscribing broker-dealer.
4. Uncertainty regarding pricing: tZERO ATS is in the process of developing a price information feed from the tZERO ATS that will be available on the tZERO ATS's website and potentially other locations. Overstock is hopeful they will be able to provide the real-time feed live before the dividend is paid. In the event this price information feed is not publicly available, BlackRock would be unable to accurately value our positions.

Based on our analysis and multiple engagements with the company, we believe the board and management team prematurely declared this dividend and did not fully vet the trading process, including the custody challenges and impediments to pricing transparency.