

OVERSTOCK.COM, INC
Form 11-K
June 29, 2007

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 11-K

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**ANNUAL REPORT PURSUANT TO SECTION 15(d) OF THE
SECURITIES**

EXCHANGE ACT OF 1934

For the fiscal year ended: December 31, 2006

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**TRANSITION REPORT PURSUANT TO SECTION 15(d) OF
THE SECURITIES**

EXCHANGE ACT OF 1934

For the transition period from to

Commission file Number 0001130713

OVERSTOCK.COM 401(k) PLAN

OVERSTOCK.COM, INC.

6350 South 3000 East

Salt Lake City, Utah 84121

OVERSTOCK.COM

401(k) PLAN

Financial Statements

And

Supplemental Schedules

December 31, 2006 and 2005

OVERSTOCK.COM

401(k) PLAN

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* Other Schedules required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974 have been omitted because they are not applicable.

Report of Independent Registered Public Accounting Firm

To the Audit Committee of Overstock.com, Inc.

Overstock.com 401(k) Plan

We have audited the accompanying statements of net assets available for benefits of Overstock.com 401(k) Plan as of December 31, 2006 and 2005, and the related statement of changes in net assets available for benefits for the year ended December 31, 2006. These financial statements are the responsibility of the Plan's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of Overstock.com 401(k) Plan as of December 31, 2006 and 2005, and the changes in net assets available for benefits for the year ended December 31, 2006, in conformity with U.S. generally accepted accounting principles.

Our audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplemental schedule of assets (held at end of year) as of December 31, 2006, is presented for purposes of additional analysis and is not a required part of the basic financial statements, but is supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974. This supplemental schedule is the responsibility of the Plan's management, has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

/s/ Mayer Hoffman McCann
P.C.
Salt Lake City, Utah
June 28, 2007

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Statements of Net Assets Available for Benefits

as of December 31, 2006 and 2005

	2006	2005
Assets		
Investments at fair value:		
Mutual funds	\$ 2,392,896	\$ 1,676,170
Money market funds	595,473	418,465
Common stock of plan sponsor	608,665	268,315
Total investments	3,597,034	2,362,950
Contributions receivable:		
Employer discretionary matching contribution	13,750	
Participant contributions	30,730	
Other receivable	1,121	
Profit sharing	409,421	341,968
Total receivables	455,022	341,968
Total assets	4,052,056	2,704,918
Liabilities		
Excess employee deferrals	36,947	2,717
Net Assets Available for Benefits	\$ 4,015,109	\$ 2,702,201

The accompanying notes are an integral part of these financial statements.

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Statement of Changes in Net Assets Available for Benefits

for the Year Ended December 31, 2006

	2006
Additions to net assets attributed to:	
Investment income (loss):	
Net (depreciation) appreciation in fair value of investments	\$ (97,749)
Interest and dividends	24,639
Total investment income (loss)	(73,110)
Contributions:	
Participant	949,481
Employer discretionary matching contributions	398,321
Profit sharing	409,421
Rollovers	45,952
Total contributions	1,803,175
Total additions	1,730,065
Deductions from net assets attributed to:	
Benefits paid to participants	376,850
Administrative expenses	614
Corrective distribution	39,693
Total deductions	417,157
Net increase in net assets available for benefits	1,312,908
Net assets available for benefits:	
Beginning of year	2,702,201
End of year	\$ 4,015,109

The accompanying notes are an integral part of these financial statements.

OVERSTOCK.COM

401(k) PLAN

Notes to Financial Statements

Note 1 Plan Description

The following is a general description of the Overstock.com 401(k) Plan (the Plan). Participants should refer to the Plan agreement for a more complete description of the Plan's provisions.

General

The Plan is a defined contribution plan which was originally adopted by Overstock.com, Inc. (the Company or Plan Sponsor) in 1998 and has been amended from time to time since that date. Participation in the Plan is open to all eligible employees of the Company (individually, Participant and collectively, Participants). The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

Trustee

The Plan has engaged Fidelity Management Trust Company (the Trustee) as Trustee to the Plan and all Plan assets are held in trust with the Trustee. The Plan has also engaged Fidelity Investments Institutional Operations Corporation, Inc. (the Recordkeeper) which provides recordkeeping and administrative services to the Plan.

Eligibility

Employees are eligible to participate in the Plan upon meeting the following criteria: (1) six months of service; and (2) 21 years of age. Employees of acquired companies, who meet the eligibility requirements of the Plan, may participate immediately upon acquisition. There were 825 and 516 participants in the Plan as of December 31, 2006 and 2005, respectively.

Contributions

Participants may contribute up to 50 percent of their annual compensation on a before-tax basis, provided the amounts do not exceed the annual limit imposed by the Internal Revenue Service (IRS). Such contributions are withheld by the Company from each Participant's compensation and deposited with the Trustee to be applied to the appropriate fund in accordance with the Participant's directives. The Company contributes a discretionary matching percentage of these contributions subject to certain limitations. For the years ended December 31, 2006 and 2005, the Company matched 50 percent of participant contributions up to 6 percent of their annual compensation.

The Company also makes, at its sole discretion, an annual profit sharing contribution. The Company authorized profit sharing contributions of \$409,421 and \$341,968, for the years ended December 31, 2006 and 2005, respectively. The plan contributes in the year following the year such contributions are authorized.

Participant contributions and company matching contributions made on behalf of highly compensated employees may be limited pursuant to non-discrimination rules set forth in the Plan document and the Internal Revenue Code of 1986, as amended (the Code).

Participant Accounts

Separate accounts are maintained for each Participant and each Participant's account is credited with the Participant's contribution, and an allocation of the Company's matching contribution and discretionary profit sharing contribution. Plan earnings are allocated to each Participant's account in proportion to the average daily balance in each fund option. The Company's discretionary matching contribution to date has been invested in common stock of the Plan Sponsor. The investment in common stock of the Plan Sponsor is considered non-participant-directed.

As of December 31, 2006, each Participant may elect to have his or her contributions invested in any one or any combination of twenty-five investment funds and in the common stock of the Plan Sponsor. These funds include:

Fidelity Contrafund The fund seeks to provide capital appreciation by investing in common stocks. The fund may invest in securities of domestic and foreign issuers whose value Fidelity Management & Research Company (FMR) believes is not fully recognized by the public. The fund may invest in growth or value stocks or both.

Fidelity Equity Income The fund invests at least 80% of assets in equity securities. Normally invests in income-producing equity securities which tend to lead to investments in large cap value stocks. The Fund potentially invests in other types of equity securities and debt securities, including lower-quality debt securities. Invests in domestic and foreign issuers.

Fidelity Intermediate Bond The fund invests at least 80% of assets in investment-grade debt securities of all types and repurchase agreements of those securities. In addition, the fund normally maintains a dollar-weighted average maturity between three and ten years.

Fidelity Value The fund invests in common stocks of companies that possess valuable fixed assets or common stocks that FMR believes are undervalued in the marketplace in relation to factors such as the issuing company's assets, earnings, or growth potential.

Fidelity Capital Appreciation The fund invests in common stocks of domestic and foreign issuers. The fund may invest in growth stocks or value stocks or both.

Fidelity Blue Chip Growth The fund primarily invests in common stocks of well-known and established companies. Normally the fund invests at least 80% of its assets in blue chip companies (those with market capitalizations of at least \$200 million if included in the S&P 500 Index or the Dow Jones Industrial Average, or \$1 billion if not included in either index). The fund may also invest in common stocks of companies that FMR believes have above-average growth potential. The fund may invest in securities of domestic and foreign issuers.

Fidelity Low-Priced Stock The fund normally invests at least 80% of assets in low-priced stocks (those priced at or below \$35 per share), which can lead to investments in small and medium-sized companies. The fund potentially invests in stocks not considered low-priced. The fund may invest in either growth or value stocks or both, and in domestic and foreign issuers.

Fidelity Diversified International The fund seeks capital growth by investing primarily in non-U.S. securities. Normally invests in common stocks. The fund allocates investments across countries and regions considering size of the market in each country and region relative to size of the international market as a whole.

Fidelity Dividend Growth The fund invests at least 80% of assets in equity securities. Normally invests in common stocks of companies that FMR believes have the potential to pay dividends in the future. The Fund invests in domestic and foreign issuers.

Fidelity Mid-Cap Stock The fund seeks long-term capital growth. Normally invests at least 80% of assets in common stocks of companies with medium market capitalization (those with market capitalization similar to companies in the Russell MidCap Index or the S&P MidCap 400 Index). Potentially investing in companies with smaller or larger market capitalization. Invests in domestic and foreign issuers. Invests in growth stocks or value stocks or both.

Fidelity Small-Cap Stock The fund invests at least 80% of its assets in common stocks of companies with small market capitalizations (those with market capitalizations similar to companies in the Russell 2000 Index or the S&P SmallCap 600 Index). The fund may invest in securities of domestic and foreign issuers.

Fidelity Freedom Income The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to a stable asset allocation strategy designed for investors already in retirement.

Fidelity Freedom 2000 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Having met its target date, Freedom 2000 continues becoming more conservative for 5 to 10 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors who retired around the year 2000.

Fidelity Freedom 2010 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2010 will continue to become more conservative for 5 to 10 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2010.

Fidelity Freedom 2020 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2020 will continue to become more conservative for 5 to 10 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2020.

Fidelity Freedom 2030 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2030 will continue to become more conservative for 5 to 10 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2030.

Spartan Total Market Index The fund normally invests at least 80% of assets in common stocks included in the Wilshire 5000 Total Market Index, which represents the performance of a broad range of U.S. stocks. FMR may lend the fund's securities to earn income.

Spartan Extended Market Index The fund invests at least 80% of its assets in common stocks included in the Wilshire 4500 Completion Index, which represents the performance of stocks of small- to mid-capitalization U.S. companies.

Fidelity Retirement Money Market Invests in U.S. dollar-denominated money market securities of domestic and foreign issuers and repurchase agreements. FMR may also enter into reverse repurchase agreements for the fund. More than 25% of the fund's total assets will be invested in the financial services industries. FMR complies with industry standard requirements for money market funds regarding quality, maturity, and diversification of the fund's investments.

Spartan US Equity Index The fund invests at least 80% of its assets in common stocks included in the S&P 500 Index, which broadly represents the performance of common stocks publicly traded in the United States.

Fidelity Freedom 2040 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2040 will continue to become more conservative

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for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2040.

Fidelity Freedom 2005 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2005 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors who retired around the year 2005.

Fidelity Freedom 2015 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2015 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2015.

Fidelity Freedom 2025 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2025 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2025.

Fidelity Freedom 2035 Invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2035 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. Targeted to investors expected to retire around the year 2035.

Overstock.com Common Stock which invests in the common stock of Overstock.com, Inc.

As of December 31, 2006 and 2005, each Participant may have elected to have his or her contributions invested in any one or any combination of twenty-five investment funds.

Vesting

Participants in the Plan are 100% vested at all times with respect to their own contributions to the Plan and the earnings thereon. With respect to Company discretionary matching and profit sharing contributions and earnings on those contributions, vesting is based on each Participant's length of employment with the Company, with 20% vesting per year of service increasing to 100% vested at the end of the fifth year of service. For the years ended December 31, 2006 and 2005, forfeited non-vested accounts totaled \$100,708 and \$51,190, respectively. The Plan Sponsor will allocate forfeited accounts to offset future employer contributions.

Administration

The Plan is sponsored by the Company. Operating and administrative expenses incurred in the administration of the Plan are the responsibility of the Plan, unless assumed by the Company. During 2006, the Company assumed all Plan administrative and operating expenses; however, the Company has no obligation to assume any Plan expenses in the future.

Distributions

Distributions from the Plan are available upon any of the following: (1) termination of employment with the Company; (2) retirement and in-service distributions upon or following age 59 1/2; and (3) disability or death. The Participant (or the designated beneficiary) will receive a lump-sum distribution equal to the vested value of the account or receive the vested value of the account in periodic installments, or transfer the vested value of the account to an Individual Retirement Account or other qualified retirement plan. Distributions from the Plan will normally be

taxed as ordinary income for income

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tax purposes, unless the Participant (or the designated beneficiary) elects to rollover his or her distributions into an Individual Retirement Account or another qualified retirement plan.

Loans to Participants

The Plan does not currently allow participant loans.

Amendment and Termination of the Plan

The Company anticipates that the Plan will continue without interruption; the Company, however, reserves the right to amend or terminate the Plan. No amendment or termination may deprive any person of rights accrued prior to the enactment of such amendment or termination. No amendment shall permit any part of the assets of the Plan to revert to the Company or be used or diverted for purposes other than for the exclusive benefit of the Participants. If the Plan should be terminated or partially terminated, the amount in each Participant's account as of the date of such termination (after proper adjustment for all expenses, earnings and allocations) becomes fully vested and non-forfeitable. Such amounts are distributable by the Trustee to the Participants.

Note 2 Significant Accounting Policies

Method of Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with generally accepted accounting principles in the United States of America (GAAP). The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at December 31, 2006 and 2005, and the reported amounts of additions to and deductions from net assets for the year ended December 31, 2006. Actual results could differ from those estimates.

Risks and Uncertainties

The Plan invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risk. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participant accounts balances and the amounts reported in the statements of net assets available for benefits and changes in net assets available for benefits.

Investment Valuation

The Plan's investments are stated at fair market value and measured daily based on quoted market prices. Investments in the various investment funds are reported at fair value as measured by Fidelity Management Trust Company at December 31, 2006 and 2005, based on net asset value of shares held by the Plan at year-end.

Purchases and sales of securities are recorded on a trade-date basis. Dividends are recorded on the ex-dividend date.

Net Appreciation (Depreciation) in Fair Value

The Plan presents in the Statement of Changes in Net Assets Available for Benefits the net appreciation (depreciation) in the fair value of its investments, which consists of realized gains and losses and unrealized appreciation (depreciation) on investments.

Contributions

Participant contributions are recorded in the period during which the Company makes payroll deductions from participants' compensation. Company matching contributions are recorded in the same period. Company profit sharing contributions are accrued in the period for which they are authorized and are paid out in the following period.

Benefits

Benefits are recorded when paid.

Note 3 Investments

Investments are valued at fair value as determined by an active market and consist of the following at December 31, 2006 and 2005:

	2006	
Fidelity Contrafund	\$ 82,062	
Fidelity Equity Income	130,905	
Fidelity Intermediate Bond	165,081	
Fidelity Value	320,383	*
Fidelity Capital Appreciation	140,553	
Fidelity Blue Chip Growth	225,921	*
Fidelity Low-Priced Stock	211,657	*
Fidelity Diversified International	249,744	*
Fidelity Dividend Growth	109,607	
Fidelity Mid-Cap Stock	248,390	*
Fidelity Small-Cap Stock	22,843	
Fidelity Freedom Income	5,190	
Fidelity Freedom 2000	10,890	
Fidelity Freedom 2010	18,400	
Fidelity Freedom 2020	64,776	
Fidelity Freedom 2030	109,976	
Spartan Total Market Index	98,971	
Spartan Extended Market Index	30,745	
Fidelity Retirement Money Market	595,473	*
Spartan US Equity Index	47,237	
Fidelity Freedom 2040	33,934	
Fidelity Freedom 2005	285	
Fidelity Freedom 2015	7,164	
Fidelity Freedom 2025	8,369	
Fidelity Freedom 2035	49,813	
Company Stock:		
Participant-directed	884	
Non-participant-directed	607,781	**
Total company stock	608,665	*
	\$ 3,597,034	

* Represents 5% or more of investments in the Plan's net assets at the indicated date.

	2005	
Fidelity Contrafund	\$ 42,455	
Fidelity Equity Income	86,442	
Fidelity Intermediate Bond	135,800	*
Fidelity Value	243,758	*
Fidelity Capital Appreciation	84,375	
Fidelity Blue Chip Growth	167,477	*
Fidelity Low-Priced Stock	172,587	*
Fidelity Diversified International	126,462	
Fidelity Dividend Growth	69,057	
Fidelity Mid-Cap Stock	195,945	*
Fidelity Small-Cap Stock	5,284	

Fidelity Freedom Income	1,625	
Fidelity Freedom 2000	7,973	
Fidelity Freedom 2010	11,716	
Fidelity Freedom 2020	52,468	
Fidelity Freedom 2030	115,551	
Spartan Total Market Index	93,185	
Spartan Extended Market Index	3,524	
Fidelity Retirement Money Market	418,465	*
Spartan US Equity Index	21,282	
Fidelity Freedom 2040	12,550	
Fidelity Freedom 2005	57	
Fidelity Freedom 2015	2,957	
Fidelity Freedom 2025	4,416	
Fidelity Freedom 2035	19,224	
	2,094,635	
Company Stock:		
Participant-directed	17,420	
Non-participant-directed	250,895	
Total company stock	268,315	*
	\$ 2,362,950	

* Represents 5% or more of investments in the Plan's net assets at the indicated date.

During 2006, the Plan's investments (including gains and losses on investments bought, sold and held during the year) depreciated in value by \$97,749 as follows:

	2006
Company stock	\$ (368,111)
Mutual funds	270,362
	\$ (97,749)

Note 4 Non-participant-directed Investments

Information about the net assets and significant components of the changes in net assets relating to non-participant-directed investments for the year ended December 31, 2006 is presented as follows:

	2006
Changes in non-participant-directed net assets:	
Investment income (loss)	\$ (406,103)
Benefits paid	(34,585)
Company discretionary contributions	797,574
Increase in net assets	356,886
Net assets invested in Company stock:	
Beginning of year	250,895
Non-participant-directed	356,886
End of year	\$ 607,781

Note 5 Excess Employee Deferrals

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The Plan failed to meet non-discrimination tests in accordance with the IRS regulations during the 2006 and 2005 Plan years and it was determined certain participants would be refunded a portion of their

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contributions. The amount accrued for at December 31, 2006 and refunded in 2007 was \$36,947. The amount accrued for at December 31, 2005 and refunded in 2006 was \$2,717.

Note 6 Tax Status of the Plan

The Plan is a standardized prototype plan developed by the Trustee of the Plan. As such, the Plan can rely on the opinion letter issued by the IRS to the Trustee. The most recent letter dated October 9, 2003, stated that the Prototype Plan, as then designed, was in compliance with the applicable requirements of the Code. The Company believes that the Plan is currently designed and being operated in compliance with the applicable requirements of the Code.

Note 7 Parties in Interest

Certain investments of the Plan are shares of funds managed by the Trustee. In addition, the Plan holds an investment in Overstock.com, Inc. common stock. These transactions are considered exempt party-in-interest transactions. The 2006 and 2005 employer discretionary contributions were invested in money market funds and in Overstock.com, Inc. common stock.

Note 8 Reconciliation of the Financial Statements and Schedule H of Form 5500

The following is a reconciliation of net assets available for benefits as reported in the financial statements to the Form 5500:

	December 31, 2006	December 31, 2005
Net assets available for benefits as reported in the financial statements	\$ 4,015,109	\$ 2,702,201
Plus: excess contributions payable not reported on the Form 5500	36,947	2,717
Less: profit sharing contribution receivable not reported on the Form 5500	(453,901) (341,968)
Net assets available for benefits as reported in the Form 5500	\$ 3,598,155	\$ 2,362,950

The following is a reconciliation of the statement of changes of net assets available for benefits as reported in the financial statements to the Form 5500:

	December 31, 2006
Contributions as reported in the financial statements	\$ 1,803,175
Plus: 12/31/05 profit sharing contribution receivable	341,968