

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 34088; 812-15177

Upstart Holdings, Inc.

November 9, 2020

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (the “Act”).

Summary of Application: Applicant requests an order to permit it directly, and through wholly-owned subsidiaries, to operate an artificial intelligence (“AI”)-based lending platform (“Platform”) that facilitates the issuance of small consumer general purpose loans, and conduct related activities, without being subject to the provisions of the Act.

Applicant: Upstart Holdings, Inc.

Filing Dates: The application was filed on November 5, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by e-mailing the Commission’s Secretary at Secretarys-Office@sec.gov and serving Applicant with a copy of the request by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2020, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request by e-mailing the Commission’s Secretary.

ADDRESSES: The Commission, Secretarys-Office@sec.gov; Applicant, 2950 S. Delaware Street, Suite 300, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Rochelle Plesset, Senior Counsel, or David Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at

<http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicant's Representations:

1. Upstart Network Inc. ("UNI"), a Delaware corporation established in 2012, originally began as an internet-based platform that connected graduates with investors who provided funding in return for a portion of the graduate's earnings. As part of its operations, UNI used AI and modelling to assess a graduate's future income. In 2014, UNI adapted its AI model to support the origination of consumer loans and changed its business model to that of operating the Platform and conducting related activities.
2. Applicant states that, pursuant to a restructuring, Applicant was incorporated in December 2013 to become the holding company of UNI, which in turn became its wholly-owned subsidiary. Applicant states that it operates its business, directly and indirectly, through UNI. Accordingly, Applicant's assets consist entirely of its interest in UNI. Applicant has publicly filed a Form S-1 registration statement and intends to effect an initial public offering ("IPO") of its equity securities.

3. Applicant states that UNI develops AI models that are generally used by partner U.S. banks to quantify the credit risk of potential borrowers and to determine whether to originate a loan if the AI model shows the loan meets applicable underwriting standards. UNI also operates the Platform, which among other things, aggregates consumer demand for the loans, and connects that demand to the banks for purposes of originating the loans. Through the Platform, UNI provides banks a broad range of services, including an application flow interface used to facilitate origination of loans, risk underwriting, verification of borrower information, and support for borrowers during the origination. Banks can use these services either by originating loans on the Platform or by “white-labelling” the technology on their own websites.¹ UNI also services the loans originated through its Platform.

4. Applicant states that to help facilitate the origination and liquidity of the loans originated through the Platform, UNI purchases most of the loans shortly after origination. In 2019, only 23% of the loans originated on the Platform were retained by the originating bank. In contrast, Applicant states that the vast majority of the purchased loans are sold to third parties on the day of purchase from the originating bank,² thereby never appearing on the Applicant’s consolidated

¹ Applicant notes that UNI recently began operating a pilot program in which it originates through its Platform a new auto loan product. Applicant states that while it generally prefers to collaborate with a bank partner, in this instance it could test this new product more quickly by originating the auto loans itself. Applicant states that UNI in 2020 (through September 30) has allocated \$5 million to the program (compared with \$2.2 billion in total loans originated during the same period). If the program is successful, UNI plans to offer the auto loan product to partner banks, and sell the auto loans in the same manner as it sells the consumer loans. Applicant states that UNI may engage in similar pilot programs in the future, consistent with building its AI-based business, but does not currently have any plans to do so. Applicant represents that these pilot programs are expected to represent in the aggregate no more than 5% of the loans originated through the Platform on an annual basis.

² Applicant states that these purchases and sales are for exactly the same amount and, accordingly, Applicant does not profit from such sales.

balance sheet.³ Applicant states that in 2019 loans immediately sold to third parties constituted 70% of all loans originated through the Platform.

5. Applicant states that the loans not retained by the originating bank or immediately sold to third parties are held indirectly by UNI until the loans are eventually sold, placed in securitization vehicles that UNI may be sponsored by UNI or an unaffiliated third party, or held to maturity. Applicant states that in 2019, these loans constituted 7% of the loans originated through the Platform (compared to a high of 20% in 2017, which was the year UNI launched its securitization program). Applicant states that the amount of loans held on its balance sheet has fluctuated because UNI's purchase of these loans generally serves as a backstop for excess loans originated on the Platform. Applicant explains that UNI holds these loans because the Platform supports the origination of more loans than can immediately be sold and that providing banks with such liquidity allows the Applicant to grow its business more quickly. Nevertheless, Applicant states that UNI only holds to maturity those loans that it cannot ultimately sell or securitize. Furthermore, Applicant states that the amount of loans purchased and held depends on the market for the loans, not on any decision regarding whether to purchase particular loans or the amount of loans that should be retained. Applicant explains that the average length of time that loans remained on its consolidated balance sheet was approximately 3.3 months (calculated as weighted average time of loans on the balance sheet as of 1Q 2020).

6. Applicant states that the loans purchased by UNI that are not immediately sold are held by UNI's wholly-owned subsidiaries: Upstart Warehouse Trust ("UWT"), Upstart Loan Trust

³ As a holding company, Applicant asserts that its financial data consolidated with its wholly-owned subsidiaries' financial data provides a more accurate picture of its business.

(“ULT”) and Upstart Loan Trust 2 (“ULT2”).⁴ Applicant explains that UWT and ULT hold certain loans originated on the Platform until such loans are sold to third parties or placed in the securitization vehicles. ULT2 holds loans that are purchased or repurchased by UNI, which UNI believes cannot be sold in the future. Such loans are held to maturity unless they are ultimately sold to third parties or securitized.

7. Applicant states that the assets listed on its consolidated balance sheet consist primarily of the loans, certain certificates issued by the securitization vehicles (“ABS”), cash and cash equivalents. Applicant explains that it seeks to hold only the amount of ABS it is required to retain for purposes of compliance with Regulation RR under Section 15G of the Securities Exchange Act of 1934 (“Risk Retention Rules”) and will sell them as soon as Applicant is no longer required to hold all or part of those interests. Applicant states that after the IPO, Applicant intends to invest any proceeds not immediately required in Government securities and Capital Preservation Investments.⁵

8. Applicant states that although loans comprise the vast majority of its assets, Applicant’s net revenue⁶ is almost exclusively derived from Platform fees, loan servicing fees and loan referral fees. Applicant states that in 2019, 97% of its net revenue was derived from such fees, 71% of which were related to the loans that were immediately sold upon origination. Net interest revenue from the loans in 2019 represented approximately 3% of total net revenues.

⁴ Applicant states that at the time of the application, UWT was in the process of being dissolved. ULT and ULT2 will continue to operate as described in the application.

⁵ The term “Capital Preservation Investments” refers collectively to Applicant’s investments in short-term investment grade and liquid fixed income and money market investments that earn competitive market returns and provide a low level of credit risk.

⁶ Applicant states that because it is still operating at a net loss, income may not be the most relevant determinant of its status as an operating company; rather, Applicant states that its current source of revenues provides a more accurate picture of the nature of its business.

Applicant's Legal Analysis:

1. Section 3(a)(1)(A) of the Act defines the term “investment company” to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer’s total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines “investment securities” to include all securities except Government securities, securities issued by employees’ securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies and (b) are not relying on the exclusions from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Act.

2. Applicant states that, based on the Applicant’s consolidated financial statements for 2019, approximately 87% of assets (of which 76% were in loans), were in investment securities as defined in Section 3(a)(2) of the Act. Accordingly, Applicant states that it may meet the definition of investment company under Section 3(a)(1)(C). Applicant also states that the

definition of investment company under Section 3(a)(1)(A) also may be implicated because the loans may be considered to be securities for purposes of the Act.⁷

3. Applicant, however, states that it views itself, and has consistently represented itself publicly, as being primarily engaged in the business of providing technology and related services to financial institutions and not in the business of being an investment company or investing in loans. Applicant explains that most of its 374 employees are devoted to developing the AI models, facilitating the origination and financing of loans through its Platform, performing roles supporting the operations of the Platform and servicing those loans. Applicant states that only 9 employees are engaged in any activities related to managing the loans held on the Applicant's balance sheet. Applicant estimates that these 9 individuals spend a negligible amount of time on activities related to the loans. In addition, Applicant states that substantially all of its net revenues are derived from these business activities. Applicant states that the loans and other investment securities that are held by its wholly-owned subsidiaries are a byproduct of these activities and are acquired not for investment purpose but to support the loan origination by its partner banks by finding financing for those loans. Furthermore, Applicant states that any net investment income derived from such securities is minimal.

⁷ Section 3(c)(4) of the Act excepts from the definition of investment company any person substantially all of whose business is confined to making small loans, industrial banking, or similar businesses. Section 3(c)(5) of the Act excepts from the definition of investment company, in relevant part, any person who is primarily engaged in one or more of the following businesses: (A) purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Applicant states that it is unable to rely Section 3(c)(4) because it is not in the business of originating loans. Applicant states that it is unable to rely on Section 3(c)(5) because it is not primarily engaged in purchasing or acquiring loans, and the loans are not of the types specified in the exclusion.

4. Applicant states that it, including its wholly-owned subsidiaries, are subject to a range of regulations that cover their business activities. Specifically, Applicant states that UNI maintains state licenses and registrations related to consumer lending, loan brokering and servicing.

Applicant also states that the Platform generally has been structured to comply with banking regulations, consistent with UNI's role as a service provider to its bank partners.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order under Section 6(c) to permit the Applicant, directly and through its wholly-owned subsidiaries, to engage in its business activities without being subject to the Act.

6. Applicant states that the requested exemption is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that, directly and through its wholly-owned subsidiaries, it is primarily engaged in the business of providing technology and related services to financial institutions to help facilitate the origination of loans to consumers. Applicant states that the structure of its business, including the acquisition of the investment securities, was not established, and is not operated, for the purpose of creating an investment company within the

contemplation of the Act, and the Applicant's business activities are not of the type intended to be regulated under the Act.

Applicant's Conditions:

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Applicant will not hold itself out as being engaged in investing, reinvesting or trading in securities other than loans originated through the Platform as described in the Application.
2. Applicant, directly or indirectly, will only hold loans that are originated through the Platform as described in the application.
3. Any loans held to maturity will represent less than 15% of the total volume of loans held, directly or indirectly, by the Applicant on a rolling basis for the last four most recent fiscal quarters combined.
4. Applicant, directly or indirectly, will not hold loans for speculative purposes.
5. Applicant will allocate and use its accumulated cash and any investment securities (other than loans) for *bona fide* business purposes in accordance with a cash-management investment policy adopted by Applicant's board of directors and will refrain from investing or trading in securities for short-term speculative purposes. As of the last date of each last fiscal quarter, at least 90% of investment securities other than the loans or ABS held only for purposes of satisfying the Risk Retention Rules, held by the Applicant on a consolidated basis, will be in Capital Preservation Investments.
6. Net revenue earned from interest on the loans will comprise, on a rolling basis for the last four most recent fiscal quarters combined, in combination with interest on any other investment securities, no more than 10% of Applicant's total net revenue. For purposes of this condition, net

revenue excludes (from both the numerator and the denominator) interest generated by cash holdings, Government securities, and risk retention vehicles, as well as fair value adjustments for the loans, and will be calculated net of interest paid on any credit facilities used to purchase the loans.

7. Applicant may continue to rely on the order granting the requested relief so long as the operations that gave rise to the request for the exemptive order do not differ materially from those described in this application.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.