

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90366; File No. SR–CboeEDGA–2020–028]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Rule 14.10, Requirements for Securities Issued by the Exchange or Its Affiliates

November 6, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on October 30, 2020, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 14.10 (Requirements for Securities Issued by the Exchange or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The Exchange notes that the changes proposed herein are substantively identical to changes adopted on Cboe BZX Exchange, Inc. (“BZX”).<sup>3</sup>

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 14.10 (Requirements for Securities Issued by the Exchange or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The Exchange notes that the changes proposed herein are substantively identical to changes adopted on Cboe BZX Exchange, Inc. (“BZX”).<sup>4</sup>

Rule 14.10 sets forth certain monitoring requirements that must be met throughout the continued listing and trading of securities issued by the Exchange or its affiliates. More specifically, Rule 14.10(b) and (c) provide that:

- Throughout the continued listing and trading of an Affiliate Security<sup>5</sup> on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee (“ROC”) of the Exchange’s Board of Directors that describes the Exchange’s monitoring of the Affiliate Security’s compliance with the Exchange’s listing standards (the “Quarterly Listing Report”);
- once a year, an independent accounting firm shall review the listing standards for the Affiliate Security to ensure that the issuer is in compliance with the listing requirements (“Annual Report”), and a copy of the Annual Report shall be forwarded promptly to the ROC; and
- throughout the trading of an Affiliate Security on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange’s Board of Directors that describes the Exchange’s monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security’s compliance with

the Exchange’s listing and trading rules (the “Quarterly Trading Report” and, collectively with the Quarterly Listing Report, the “Quarterly Reports”).

Rule 14.10(d) requires that a copy of all Quarterly Reports and Annual Reports will be forwarded promptly to the Commission.

The Exchange proposes to amend Rule 14.10(d) to remove the requirement that copies of the Quarterly Reports and Annual Reports be forwarded to the Commission and instead providing that the Exchange will forward a copy of the Quarterly Reports and/or Annual Reports to the Commission upon request.

Finally, the Exchange is proposing to make clear that the requirements under Rule 14.10(b)(1),<sup>6</sup> (3),<sup>7</sup> (3),<sup>8</sup> and (4)<sup>9</sup> do not apply to Affiliate Securities that are Exchange-listed options. The Exchange is proposing this change because there is no issuer for options as the term is used in Rule 14.10(b) and each of the requirements under Rule 14.10(b) is implicitly related to equity securities and not to options on such equity securities. The Exchange is not proposing to make any changes to the

<sup>6</sup> Rule 14.10(b)(1) requires that prior to the initial listing of an Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange’s rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange’s Board of Directors.

<sup>7</sup> Rule 14.10(b)(2) requires that throughout the continued listing of an Affiliate Security on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange’s Board of Directors that describes the Exchange’s monitoring of the Affiliate Security’s compliance with the Exchange’s listing standards, including: The Affiliate Security’s compliance with the Exchange’s minimum share price requirement; and the Affiliate Security’s compliance with each of the quantitative continued listing requirements.

<sup>8</sup> Rule 14.10(b)(3) requires that once a year, an independent accounting firm shall review the listing standards for the Affiliate Security to ensure that the issuer is in compliance with the listing requirements and a copy of the report shall be forwarded promptly to the Regulatory Oversight Committee of the Exchange’s Board of Directors.

<sup>9</sup> Rule 14.10(b)(4) requires that in the event that the Exchange determines that the EDGA Affiliate is not in compliance with any of the Exchange’s listing standards, the Exchange shall notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange shall file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The report shall identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange’s listing standards, if any.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 86623 (August 9, 2019) 84 FR 41771 (August 15, 2019) (SR–CboeBZX–2019–073) (the “BZX Filing”).

<sup>4</sup> See Securities Exchange Act Release No. 86623 (August 9, 2019) 84 FR 41771 (August 15, 2019) (SR–CboeBZX–2019–073) (the “BZX Filing”).

<sup>5</sup> As defined in Rule 14.10(a)(2), the term “Affiliate Security” means any security issued by a EDGA Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Rule 14.8(d) and Investment Company Units as defined in Rule 14.2.

requirement for all Affiliate Securities (including options) under Rule 14.10(c) that “[t]hroughout the trading of an Affiliate Security on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange’s Board of Directors that describes the Exchange’s monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security’s compliance with the Exchange’s listing and trading rules.” As such, the Exchange will continue to prepare reports on all Affiliate Securities (including those that are Exchange-listed options) as required under Rule 14.10(c).

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general and Section 6(b)(5) of the Act<sup>11</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, because the proposed changes would reduce the paperwork received by the Commission and ease the burden of submitting the Quarterly Reports and Annual Reports, without changing the information available to the Commission. In discussions with the Commission Staff regarding Rule 14.10, it was determined that the Exchange no longer needed to provide copies of the

Quarterly Reports and Annual Reports to the Commission. The Quarterly Reports and Annual Reports would continue to be available to the Commission, as they are subject to Section 17 of the Act<sup>12</sup> and Rule 17a–1 thereunder,<sup>13</sup> pursuant to which the Exchange is required to keep and preserve copies of the Quarterly Reports and Annual Reports, and to promptly furnish to the Commission copies of such Reports upon request of any representative of the Commission.

Finally, the Exchange believes that the clarifying change to exclude options on Affiliate Securities from the requirements of Rule 14.10(b) would promote just and equitable principles of trade and remove impediments to a free and open market by making clear that certain obligations that implicitly did not apply to options on Affiliate Securities do not, in fact, apply. As noted above, the Exchange will continue to prepare reports on all Affiliate Securities that include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security’s compliance with the Exchange’s listing and trading rules (including those that are Exchange-listed options) as required under Rule 14.10(c).

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes to eliminate the requirement that the Exchange submit copies of the Quarterly Reports and Annual Reports to the Commission and excluding options on Affiliate Securities from the requirements of Rule 14.10(b) will have no impact on competition.

### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b–4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>16</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to make the proposed changes to its rules without unnecessary delay in order to be consistent with those already in place on BZX, its affiliate. The Commission notes that the proposed rule change is based on and substantively identical to the rules of BZX.<sup>18</sup> For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>16</sup> 17 CFR 240.19b–4(f)(6).

<sup>17</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>18</sup> See *supra* note 3.

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78q.

<sup>13</sup> 17 CFR 240.17a–1.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2020-028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGA-2020-028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2020-028 and should be submitted on or before December 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**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 emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving Applicant with a copy of the request by email. 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 emailing the Commission's Secretary.

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

**FOR FURTHER INFORMATION CONTACT:** Rochelle Plessset, 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.<sup>1</sup>

<sup>1</sup> 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