

**STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT**

In The Matter of: Upstart Network, Inc.
Case No. 16-034

CONSENT ORDER

WHEREAS, the New Hampshire Banking Department (“Department”) is charged with regulating persons who engage in certain activities with respect to small loans in New Hampshire and enforcing the provisions of RSA 399-A.

WHEREAS, Upstart Network, Inc. (“UNI”), a Delaware corporation formed in 2012, is a services and technology provider to a federally insured bank to allow qualified borrowers to apply for and obtain unsecured consumer loans from the bank through an online lending platform (“Upstart Program”).

WHEREAS, the Department was in receipt of direct mail soliciting a New Hampshire consumer to obtain a loan from the bank through the Upstart Program in an amount up to \$35,000.

WHEREAS, because of the solicitation, the Department requested information from UNI about its role in the bank’s loan program, from which the following information is relevant:

1. Twenty-three loans of \$10,000 or less and with an annual percentage rate of 10 to 36 percent were made to New Hampshire consumers by the bank through the Upstart Program between January and June 2016.

2. As part of the Upstart Program, UNI provides the online platform through which New Hampshire consumers may apply for a bank loan.
3. UNI acts as the bank's agent with respect to loan application processing, including obtaining and verifying information in connection with loan applications, such as credit reports and information about the applicant's education, employment and income.
4. The bank approves the loan applications, extends credit and funds the loans.
5. UNI acts as the loan servicer on behalf of the bank and its successors and assigns.

WHEREAS, RSA 399-A:1, XII defines "lender," in pertinent part, as

a person who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

- (a) Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring loans, or commitments for loans.
- (b) Offers to serve as an agent for any person in an attempt to obtain a loan.
- (c) Offers to serve as an agent for any person who has money to lend for a loan.
- (d) Performs services or any of the business functions auxiliary or supplemental to the production, distribution or maintenance of loans for a lender.
- (e) Acts as a credit services organization as defined in RSA 359-D:2, II.
- (f) Advertises for, solicits, or holds himself out as willing to make or procure small loans, payday loans, or title loans.
- (g) Holds the servicing rights to a small loan or records small loan payments on its books and records and performs such other administrative functions as may be necessary to properly carry out the debt holders' obligations under a loan agreement.

WHEREAS, the Department believes that UNI's activities fall within subsection (d) of the definition of "lender."

WHEREAS, UNI neither admits nor denies any of the findings herein or any violations of New Hampshire law.

WHEREAS, nevertheless, UNI agrees that prompt and efficient resolution of this matter is in the best interest of the parties and desires to maintain a positive working relationship with the Department by consenting to enter into this Consent Order.

WHEREAS, UNI at all times facilitated the Department's inquiry and review of UNI's business model and activities with regard to the bank's loan program.

WHEREAS, upon receiving an inquiry from the Department regarding its lending activities with New Hampshire consumers, UNI immediately initiated the licensing process with the Department for small loan lender licensure, as defined in RSA 399-A:1, XII, and pursuant to RSA 399-A:2.

WHEREAS, UNI makes the following acknowledgements:

1. UNI knowingly and voluntarily enters into and signs this Consent Order without threats, force, intimidation or coercion of any kind.
2. Although UNI neither admits nor denies any of the findings herein or any violation of New Hampshire law, UNI understands the nature of the allegations set forth herein and the potential sanctions under the provisions of RSA 399-A.
3. UNI understands that it has the right to notice and an adjudicatory hearing to contest the matters set forth herein, including any appeal, and hereby waives those rights.
4. UNI understands that its action in entering this Consent Order is a final act and not subject to reconsideration or judicial review or appeal.
5. UNI represents and warrants that it has all the necessary rights, powers and abilities to carry out the terms of this Consent Order.

6. UNI acknowledges that the Department is relying upon UNI's representations and warranties stated herein in making its determinations in this matter.
7. UNI acknowledges that this Consent Order may be revoked and the Department may pursue any and all remedies available under the law against UNI if the Department later learns that UNI knowingly or willfully withheld information from the Department.

WHEREAS, as an economical and efficient method of resolving the foregoing matters, UNI consents to enter into this voluntary Consent Order with the Department as follows:

1. UNI shall, pursuant to RSA 399-A:23, IV, pay an administrative fine in the amount of \$23,000, which UNI shall, contemporaneously with the execution of this Consent Order, remit to the New Hampshire Banking Department by check payable to the "State of New Hampshire";
2. UNI shall continue to keep open its pending small loan lender license application with the Department and, upon issuance of such license to UNI, agrees to maintain the license for so long as it engages in activities that the Department has alleged fall within the scope of RSA 399-A; and
3. Failure by UNI to comply with any portion of this Consent Order shall constitute a separate and sufficient basis for administrative action, up to and including license suspension, revocation and monetary penalties.

NOW THEREFORE, the Commissioner of the New Hampshire Banking Department enters the following ORDER:

1. The sanctions set forth above are hereby entered;

2. This Order fully resolves this matter and the Commissioner will not take further action against UNI for the allegations presented herein, provided that the Department may take enforcement action against UNI for any violation of this Consent Order or the matters underlying its entry, if the Commissioner determines that compliance with the terms of this Order are not being observed or if any representation made by UNI and reflected herein is subsequently discovered to be untrue;
3. Nothing herein shall nor is intended in any way whatsoever to challenge or negate the validity or legality of any loans, or any term associated therewith, made by the bank to New Hampshire consumers through the Upstart online platform;
4. Nothing herein is intended to alter any future statutory or regulatory requirements of licensure and the allegations set forth above may be fully taken into account by the Department in connection with future examinations and enforcement actions;
5. Pursuant to RSA 399-A:20, VI, the Commissioner finds this action necessary or appropriate to the public interest or the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title; and
6. This Consent Order shall become effective and final upon the date signed by the Banking Department Commissioner.
7. Once this Consent Order is effective and final, the Department agrees not to seek reimbursement, refunds, penalties, fines, costs or fees from UNI or the bank and its successors and assigns regarding any of the facts, allegations or findings of violations contained herein.

8. This Consent Order is the complete document representing resolution of this matter. There are no other agreements, promises, representations or warranties other than those set forth in this Consent Order.

Executed by:

_____/s/
Rosemary Wiant, Esq.
New Hampshire Banking Department

12/14/16
Date

_____/s/
Alison Nicoll
General Counsel
Upstart Network, Inc.

12/7/16
Date

SO ORDERED.

_____/s/
Gerald H. Little, Commissioner
New Hampshire Banking Department

12/20/16
Date