

State of Ohio, Division of Securities

In the matter of

Prosper Marketplace, Inc.

Respondent.

) [Matter No.] 09-073

) **ADMINISTRATIVE CONSENT ORDER**

WHEREAS, the Ohio Department of Commerce, Division of Securities (the "Division") conducted an investigation of **Prosper Marketplace, Inc. ("PROSPER")** and determined that **PROSPER** has offered and sold securities as defined in **R.C. 1707.01(C)**; and

WHEREAS, a number of state regulators coordinated investigations into **PROSPER'S** activities in connection with unregistered securities offered and sold between 2006 and October 2008; and

WHEREAS, **PROSPER** has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and halting further offers and sales until the securities are appropriately registered; and

WHEREAS, **PROSPER**, as part of this settlement agrees to appropriately register its securities with the Division before making further offers or soliciting sales, and to make certain payments; and

WHEREAS, **PROSPER** neither admits nor denies the Findings of Fact and Conclusions of Law, but has agreed to resolve the investigations relating to its offers and sales of unregistered securities through this Administrative Consent Order (the "Order") in order to avoid protracted and expensive proceedings in numerous states; and

WHEREAS, **PROSPER**, as evidenced by the authorized signature on the consent to the Order below, admits the jurisdiction of the Division, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under Chapter 119 of the Revised Code with respect to this Order;

1 NOW, THEREFORE, the Division, as administrator of the Ohio Securities Act, R.C.
2 1707.01 to 1707.45, hereby enters this Order:

3 **FINDINGS OF FACT**

4 **Part 1: Respondent Licensing/Registration History**

5 1. **PROSPER** is a Delaware corporation (Delaware Division of Corporations #3943799) that
6 was incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street,
7 22nd Floor, San Francisco, California 94104. **PROSPER** registered as a foreign business
8 corporation in the State of Ohio on September 15, 2005 (Registration No. 1569956), but that
9 registration was cancelled by the Ohio Department of Taxation on May 5, 2009. Since February
10 2006 **PROSPER** has held itself out, through its Internet website, www.prosper.com, as an online
11 marketplace for “person to person” lending.

12 2. **PROSPER** has been licensed as a California finance lender (License #605-3227) since
13 December 19, 2005 and as a consumer finance company by the Ohio Department of Commerce,
14 Division of Financial Institutions since April 17, 2007, License No. sm501506.000. Its consumer
15 finance license allows **PROSPER**, pursuant to R.C. 1321.20, 1321.21, 1321.51 to 1321.60 and
16 1321.99, to make loans to consumers within certain limits. A consumer finance license does not
17 authorize a licensee to sell securities in the State of Ohio.

18 3. **PROSPER** submitted an application to register securities in the State of Ohio on November
19 7, 2007. That registration, File No. 60612, was withdrawn by the Division without prejudice on
20 November 25, 2008 pursuant to Ohio Administrative Code 1301:6-3-13. As of the date of this
21 order, **PROSPER** does not yet have an active securities registration in the State of Ohio.

22 **Part 2: Prosper Product Prior to October 16, 2008**

23 4. **PROSPER'S** lending platform functioned like a double-blind auction, connecting
24 individuals who wish to borrow money, or “borrowers,” with individuals or institutions who wish
25 to commit to purchase loans extended to borrowers, referred to on the platform as “lenders.”
26 Lenders and borrowers registered on the website and created **PROSPER** identities. They were

1 prohibited from disclosing their actual identities anywhere on the **PROSPER** website.

2 5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between \$1,000 and
3 \$25,000 by posting “listings” on the platform indicating the amount they wanted to borrow and the
4 maximum interest rate they were willing to pay. **PROSPER** assigned borrowers a credit grade
5 based on a commercial credit score obtained from a credit bureau, but **PROSPER** did not verify
6 personal information, such as employment and income.

7 6. Potential lenders bid on funding all or portions of loans at specified interest rates, which
8 were typically higher than rates available from depository accounts at financial institutions. Each
9 loan was usually funded with bids by multiple lenders. After an auction closed and a loan was fully
10 bid upon, the borrower received the requested loan with the interest rate set by **PROSPER** and
11 determined by the auction bidding at the lowest rate acceptable to all winning bidders.

12 7. Individual lenders did not lend money directly to the borrower; rather, the borrower
13 received a loan from a bank with which **PROSPER** has contracted. (Prior to April of 2008, loans
14 were made directly by **PROSPER**.) The interests in that loan were then sold and assigned through
15 **PROSPER** to the lenders, with each lender receiving an individual non-recourse promissory note.

16 8. Since the inception of its platform in January 2006, **PROSPER** has initiated approximately
17 \$174 million in loans nationwide. **PROSPER** collected an origination fee from each borrower of
18 one to three percent of loan proceeds, and collected servicing fees from each lender from loan
19 payments at an annual rate of one percent of the outstanding principal balance of the notes.

20 9. **PROSPER** administered the collection of loan payments from the borrower and the
21 distribution of such payments to the lenders. **PROSPER** also initiated collection of past due loans
22 from borrowers and assigned delinquent loan accounts to collection agencies. Lenders and
23 borrowers were prohibited from transacting directly and were unable to learn each others’ true
24 identities.

25 10. **PROSPER** voluntarily suspended all offers and sales of securities on October 16, 2008.

26 11. Ohio residents have financed 40,789 **PROSPER** loans totaling more than \$3,343,680.16.

1 **Part 3: Prosper's Omissions in Connection with Sales to Investors**

2 12. **PROSPER** provided information to lenders concerning the issues noted below,
3 although it did not provide the information in the manner typically required of a securities
4 registrant regarding: details of the company's business model; biographical information about the
5 background and experience of **PROSPER'S** management; certain risk factors in connection with
6 the purchase of a **PROSPER** facilitated note, including the fact that the notes were speculative
7 investments; significant financial risks that investors may be subjected to when investing in the
8 **PROSPER** notes that could result in a complete loss of their investment, such as the fact that
9 borrowers may not fulfill their obligations to make payments for reasons of death or incapacity,
10 bankruptcy, or inability to pay; information concerning **PROSPER's** status as a development
11 stage company with a limited operating history; and the possibility that **PROSPER** could cease
12 operations at any time due to the failure to raise additional capital, because of a lack of
13 profitability, or because of regulatory concerns.
14

15 13. The **PROSPER** website, the company's exclusive mode of dissemination of
16 information to prospective investors, did not contain financial statements for **PROSPER**, did not
17 disclose that the notes were not registered with the Division, and that **PROSPER** might have
18 significant contingent liability for the offer and sale of unregistered securities.
19

20 **CONCLUSIONS OF LAW**

21 1. The "notes" sold by **PROSPER** to Ohio residents are securities, as defined by R.C.
22 1707.01(C).

23 2. **PROSPER** sold securities that were not registered with the Division in violation of R.C.
24 1707.44(C)(1).

25 3. In connection with the offer or sale of a security to Ohio residents, **PROSPER**
26

1
2 either failed to include information or failed to describe in the manner typically required of a
3 securities registrant certain business or loan information including investment risk factors, that
4 would have aided investors, or prospective investors in making an objective decision on whether
5 to invest in the **PROSPER** notes in violation of R.C. 1707.44(G).

6
7 **ORDER**

8 **IT IS HEREBY ORDERED:**

9 1. **PROSPER** will CEASE AND DESIST from offering and/or selling securities to persons in or
10 from the State of Ohio in violation of the Ohio Securities Act and will comply with the Ohio
11 Securities Act.

12 2. **PROSPER** shall pay the sum of \$18,868.00 to the State of Ohio.

13 3. In the event another state securities regulator determines not to accept **PROSPER'S** state
14 settlement offer, the total amount of the **Ohio** payment shall not be affected, and shall remain at
15 \$18,868.00.

16 4. This Order concludes the investigation by the Division and any other action that the Division
17 could commence under the Ohio Securities Act as it relates to **PROSPER**, up to and including any
18 activity through November 24, 2008; provided however, that excluded from and not covered by
19 paragraph 1 in this section are any claims by the Ohio Department of Commerce, Division of
20 Financial Institutions arising from or relating to the "Order" provisions contained herein.

21 5. This Order is entered into solely for the purpose of resolving the referenced multistate
22 investigation, and is not intended to be used for any other purpose, and its findings and conclusions
23 shall not constitute admissions on the part of **PROSPER** for any purpose.

24 6. If payment is not made by **PROSPER**, or if **PROSPER** defaults in any of its obligations
25 set forth in this Order, the Division may vacate this Order, at its sole discretion, upon 10 days
26 notice to **PROSPER** and without opportunity for administrative hearing, and commence separate
action.

1 7. For any person or entity not a party to this Order, this Order does not limit or create any
2 private rights or remedies against **PROSPER**, does not limit or create liability of **PROSPER**, or limit
3 or create defenses of **PROSPER** to any claims.

4 8. Nothing herein shall preclude the Ohio Department of Commerce, its departments, agencies,
5 boards, commissions, authorities, political subdivisions and corporations, other than the Division and
6 only to the extent set forth in paragraph 1 in this section, (collectively, "State Entities") and the
7 officers, agents or employees of State Entities from asserting any claims, causes of action, or
8 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
9 injunctive relief against **PROSPER** in connection with unregistered securities sales.

10 9. This Order and any dispute related thereto shall be construed and enforced in accordance
11 with, and governed by, the laws of the State of Ohio without regard to any choice of law principles.

12 10. This Order shall be binding upon **PROSPER** and its successors and assigns as well as to
13 successors and assigns of relevant affiliates with respect to all conduct subject to the provisions
14 above and all future obligations, responsibilities, undertakings, commitments, limitations,
15 restrictions, events, and conditions.

16
17 Dated this 16th day of June, 2009.

18 BY ORDER OF

19 Andrea L. Seidt

20 Andrea L. Seidt, Commissioner of Securities
21
22
23
24
25
26

1
2
3 **CORPORATE CONSENT TO ENTRY OF ORDER FOR**
4 **PROSPER MARKETPLACE, INC.**

5 I, Kirk T. Inglis, state that I am an officer of Prosper Marketplace, Inc. and I am authorized to act
6 on its behalf; that I have read the foregoing Order and that I know and fully understand the contents
7 hereof; that Prosper Marketplace, Inc. voluntarily consents to the entry of this Order without any
8 force or duress, expressly waiving any right to a hearing in this matter; that Prosper Marketplace,
9 Inc. understands that the Division reserves the right to take further actions to enforce this Order or
10 to take appropriate action upon discovery of other violations of the Ohio Securities Act by Prosper
11 Marketplace Inc.; and that Prosper Marketplace, Inc. will fully comply with the terms and
12 conditions stated herein. Prosper Marketplace, Inc. agrees that it shall not claim, assert, or apply for
13 a tax deduction or tax credit with regard to any state, federal or local tax for any administrative
14 monetary penalty that shall it pay pursuant to this Order.

15 Prosper Marketplace Inc. understands that this order is a public record document.

16
17 Prosper Marketplace Inc. has been represented by counsel of its choosing in connection with
18 the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.
19

20
21 Dated this 11 day of June, 2009.

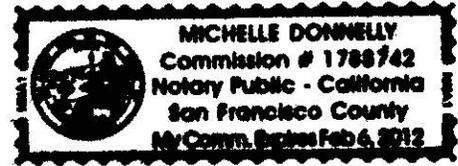
22 Prosper Marketplace, Inc.

23
24 By: Kirk T. Inglis
25 Title: Treasurer and Chief Financial Officer
26

1 SUBSCRIBED AND SWORN TO before me this 11 day of June, 2009

2 Michelle Donnelly
3 Notary Public

4 My Commission expires: February 6, 2012



5
6
7 Order Approved as to Form:

8
9 _____
Randall J. Fons, Partner
Morrison & Foerster LLP

_____ Date