

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF
CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES OF THE
STATE OF OREGON**

In the Matter of:

**PROSPER TRUST and DAVID
ALAN COLE**

Respondents.

No. A-00-0015(A)

**FINAL ORDER TO CEASE AND
DESIST, DENYING EXEMPTIONS,
AND ASSESSING CIVIL PENALTIES
AS TO RESPONDENT PROSPER
TRUST**

On June 26, 2000 the Director of the Department of Consumer and Business Services for the State of Oregon (hereafter the "Director"), acting by and pursuant to the authority of Oregon Securities Law, Chapter 59 of the Oregon Revised Statutes, and other applicable authority, issued Administrative Order No. A-00-0015(A) to **CEASE AND DESIST, DENYING EXEMPTIONS, AND ASSESSING CIVIL PENALTIES** (hereafter "the Order") against Respondent **PROSPER TRUST**.

On June 30, 2000 Respondent **PROSPER TRUST** was duly served with a true copy of the Order and Notice by United States Mail, postage prepaid, and addressed to Respondent **PROSPER TRUST** at the following last known address: 1100 Circle 75 Parkway, Suite 800, Atlanta, Georgia 30339. This mailing was not returned.

On June 30, 2000 Respondent **PROSPER TRUST** was duly served with a true copy of the Order and Notice by United States Mail, postage prepaid, and addressed to Respondent **PROSPER TRUST** at the following last known address: 125 Plantation Centre, Suite 350, Macon Georgia 31210. This mailing was not returned.

On June 30, 2000 Respondent **PROSPER TRUST** was duly served with a



1 true copy of the Order and Notice by certified United States Mail (Item
2 #Z038197270), postage prepaid, and addressed to Respondent **PROSPER TRUST**
3 at the following last known 125 Plantation Centre, Suite 350, Macon, Georgia 31210.

4 On July 6, 2000 this mailing was accepted by an agent of Prosper Trust.

5 On June 30, 2000 Respondent **PROSPER TRUST** was duly served with a
6 true copy of the Order and Notice by certified United States Mail (Item
7 #Z038197271), postage prepaid, and addressed to Respondent **PROSPER TRUST**
8 at the following last known address: 1100 Circle 75 Parkway, Suite 800, Atlanta,
9 Georgia 30339. On July 6, 2000 this mailing was accepted by an agent of Prosper
10 Trust.

11 Respondent **PROSPER TRUST** has not made a written request for a
12 contested case hearing in this matter and the time to do so has expired.

13 **NOW THEREFORE**, after consideration of the Investigation Report and
14 accompanying exhibits submitted in this matter by David T. Weiss, Securities
15 Compliance Officer, the Director hereby issues the following Findings of Fact,
16 Conclusions of Law, and Final Order:

17 **FINDINGS OF FACT**

18 The Director **FINDS** that:

19 1. Respondent **PROSPER TRUST** is, upon information and belief, a
20 division of SouthStar Corp., a Georgia corporation affiliated with Layson and
21 Gamble Financial. The last known principal office addresses for **PROSPER**
22 **TRUST** are: 125 Plantation Centre, Suite 350, Macon, Georgia 31210 and 1100
23 Circle 75 Parkway, Suite 800, Atlanta, Georgia 30339.
24

25 2. Respondent **DAVID ALAN COLE** (CRD # 2296188) (hereafter
26



1 "Cole") was licensed in Oregon as a limited Series 6 securities salesperson for
2 Sunamerica Securities, Inc. (CRD #20068) from July 5, 1994, to March 29, 1995.
3 **COLE** was licensed in Oregon as a limited Series 6 securities salesperson for
4 WMA Securities, Inc. (CRD #32625) from June 6, 1994, to July 5, 1994. **COLE**
5 was licensed in Oregon as a limited Series 6 securities salesperson for
6 Intersecurities, Inc. (CRD #16164) from March 2, 1993, to June 6, 1994. **COLE**
7 was only authorized under said licenses to effect securities transactions in
8 investment companies, mutual funds, and variable contracts. **COLE** has not
9 been licensed as a securities salesperson in Oregon from March 29, 1995, to
10 present. Cole does business under the name D. Cole & Associates at 1127
11 Lincoln St., Eugene OR 97401. D. Cole & Associates has been registered as an
12 assumed business name in Oregon from May 21, 1991, to present. **COLE** was,
13 at all times material herein, acting as an individual and as a representative,
14 salesperson, and agent for Respondent **PROSPER TRUST**. Cole"s last known
15 addresses are: 1090 Rio Glen, Eugene OR 97401 and D. Cole & Associates,
16 1127 Lincoln St., Eugene OR 97477.

17 3. David and Marta Heidt were, at all times material herein, residents
18 of the State of Oregon.

19 4. On August 24, 1998 Respondent **PROSPER TRUST** offered and
20 sold, in or from Oregon and to Oregon residents, a "High Interest Promissory
21 Note from Prosper Trust PIL #7523." Respondent **COLE** was **PROSPER**
22 **TRUST'S** agent for the purpose of this sale.

23 5. On August 24, 1998 Respondent **COLE** offered and sold, in or
24 from Oregon and to Oregon residents, a "High Interest Promissory Note from
25 Prosper Trust PIL #7523" to David and Marta Heidt. (Cease and Desist Order
26 Exhibit "A")



1 6. The note in question was a fifty thousand dollar (\$50,000.00)
2 instrument due to mature on May 24, 1999, nine (9) months after the date of
3 issuance. Although the note bears a literal interest rate of "1.5% APR" all parties
4 to the document have construed the interest rate to be 1.5% per month.

5 7. No **PROSPER TRUST** sales or financial materials were presented
6 to the Heidts by Respondent **COLE**.

7 8. Respondent **PROSPER TRUST** was obligated to tender both the
8 principal purchase price and all interest accrued on or after May 24, 1999.

9 9. Respondent **PROSPER TRUST** has not tendered any funds to the
10 Heidts.

11 10. On August 24, 1998 the above described promissory note was not
12 registered with the Oregon Division of Finance and Corporate Securities.

13 11. On August 24, 1998 Respondent **PROSPER TRUST** was not
14 licensed to effect securities transactions in or from Oregon as a broker-dealer.

15 12. On August 24, 1998 Respondent **COLE** was not licensed to effect
16 securities transactions in or from Oregon as a salesperson.

17 13. At no time prior to August 24, 1998 did Respondent **PROSPER**
18 **TRUST** inform David or Marta Heidt that it was not licensed to effect securities
19 transactions in or from Oregon as a broker-dealer or that the "High Interest
20 Promissory Note from Prosper Trust PIL #7523" was not registered with the
21 Oregon Division of Finance and Corporate Securities.

22 14. At no time prior to August 24, 1998 did Respondent **COLE** inform
23 David or Marta Heidt that he was not licensed to effect securities transactions in
24 or from Oregon as a broker-dealer salesperson or that the "High Interest
25 Promissory Note from Prosper Trust PIL #7523" was not registered with the
26 Oregon Division of Finance and Corporate Securities.



CONCLUSIONS OF LAW

The Director, based upon the findings of fact above, **CONCLUDES** that:

15. The promissory note which was offered and sold in or from Oregon or to Oregon residents by Respondents **PROSPER TRUST** and **COLE**, as described herein above, is a "security" under ORS 59.015(19)(a) and other applicable authority.

16. The offer and sale of the above described security to Oregon residents by Respondents **PROSPER TRUST** and **COLE** constitutes the transaction of securities business in Oregon by a broker-dealer and/or salesperson under ORS 59.015(1) and/or (18)(a), and other applicable authority.

17. Respondents **PROSPER TRUST** and **COLE** issued, offered, and/or sold, or personally participated, aided, and/or abetted in the offer and/or sale of, unregistered securities in Oregon in violation of ORS 59.055 when the above described promissory note was offered and sold in or from Oregon or to Oregon residents.

18. Respondents **PROSPER TRUST** and **COLE** were not licensed in Oregon to effect transactions in the above described securities, either as salespersons or broker-dealers, and as such have violated ORS 59.165.

ORDER

NOW, THEREFORE, THE DIRECTOR ORDERS that:

1. Respondent **PROSPER TRUST** shall **CEASE AND DESIST** from offering, selling, and transferring, directly or indirectly, any of the above described securities, or any other security, in or from the State of Oregon or to Oregon residents, in violation of ORS Chapter 59, Oregon Administrative Rules



Chapter 441, or Oregon Securities Law.

2. Respondent **PROSPER TRUST** is **DENIED** the use of any exemptions authorized by ORS 59.025 and ORS 59.035, until further order of the Director, pursuant to ORS 59.045.

3. Respondent **PROSPER TRUST** is **ASSESSED CIVIL PENALTIES** in the total sum of **FIVE THOUSAND DOLLARS** (\$5,000.00) for the violations of Oregon Securities Law described hereinabove.

19. Entry of this Order in no way limits or prevents further remedies, sanctions, or actions which may be available to the Director under Oregon law to enforce this Order, for violations of this Order, for conduct or actions of Respondents which are not covered by this Order, or against any party not covered by this Order.

Dated this ____ day of _____, 2000 at Salem, Oregon NUNC PRO TUNC June 26, 2000.

MARY NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
STATE OF OREGON

APPROVED AS TO FORM:

Dated: _____

David T. Weiss
Securities Compliance Officer
Division of Finance and Corporate Securities
Department of Consumer and Business Services
State of Oregon

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