

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 2 DIVISION OF FINANCE AND CORPORATE SECURITIES
 3 ENFORCEMENT SECTION
 4 BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
 BUSINESS SERVICES

5 In the Matter of: 6 PROSPER MARKETPLACE, INC. 7 8 Respondent)))))))))	No. S-08-0045 ORDER TO CEASE AND DESIST, ASSESSING CIVIL PENALTIES CONSENT TO ENTRY OF ORDER
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WHEREAS, the Director of the Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities (hereafter the "Director"), acting by and pursuant to the authority of the Oregon Securities Law, ORS 59.005 *et seq.*, and other applicable authority, conducted an investigation of **Prosper Marketplace, Inc.** ("PROSPER") and determined that **PROSPER** has offered and sold securities as defined in the Oregon Securities Law 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 Director before making further offers or soliciting sales, and to make certain payments; and

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 350 Winter Street NE, Suite 410
 Salem, OR 97301-3881
 Telephone: (503) 378-4387



1 WHEREAS, **PROSPER** neither admits nor denies the Findings of Fact and Conclusions
2 of Law, but has agreed to resolve the investigations relating to its offers and sales of unregistered
3 securities through this Order to Cease and Desist, Assessing Civil Penalties (the “Order”) in
4 order to avoid protracted and expensive proceedings in numerous states; and

5 WHEREAS, **PROSPER**, as evidenced by the authorized signature on the consent to the
6 Order below, admits the jurisdiction of the Director, voluntarily consents to the entry of this
7 Order and elects to permanently waive any right to a hearing and appeal under ORS 59.295 and
8 ORS 183.411 et seq. with respect to this Order;

9 NOW, THEREFORE, the Director hereby enters the following **Findings of Fact,**
10 **Conclusions of Law and Order:**

11 **FINDINGS OF FACT**

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

13 1. **PROSPER** is a Delaware corporation (Delaware Division of Corporations #3943799)
14 that was incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter
15 Street, 22nd Floor, San Francisco, California 94104. **PROSPER** registered as a foreign business
16 corporation with the Oregon Secretary of State on September 19, 2005 (Oregon Business
17 Registry #311694-93. Since February 2006 **PROSPER** has held itself out, through its Internet
18 website, www.prosper.com, as an online marketplace for “person to person” lending.

19 2. **PROSPER** has been licensed as a California finance lender (license #605-3227) since
20 December 19, 2005 and as a consumer finance company in Oregon since January 17, 2006
21 (Oregon Consumer Finance License #0329-001-C). Its consumer finance license allows
22 **PROSPER**, pursuant to ORS 725.045, to make loans to consumers within certain limits. A
23 consumer finance license does not authorize a licensee to sell securities to Oregon residents.

24 3. **PROSPER** submitted an application to register securities in Oregon on November 5,
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1 2007. As of the date of this order, **PROSPER** does not yet have an active securities registration
2 in Oregon.

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

4 4. **PROSPER'S** lending platform functioned like a double-blind auction, connecting
5 individuals who wish to borrow money, or "borrowers," with individuals or institutions who
6 wish to commit to purchase loans extended to borrowers, referred to on the platform as
7 "lenders." Lenders and borrowers registered on the website and created **PROSPER** identities.
8 They were prohibited from disclosing their actual identities anywhere on the **PROSPER**
9 website.

10 5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between
11 \$1,000 and \$25,000 by posting "listings" on the platform indicating the amount they wanted to
12 borrow and the maximum interest rate they were willing to pay. **PROSPER** assigned borrowers
13 a credit grade based on a commercial credit score obtained from a credit bureau, but **PROSPER**
14 did not verify personal information, such as employment and income.

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

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

26 Page 3 Prosper Marketplace, Inc. S-08-0045 Cease and Desist
Order by Consent



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

6 9. **PROSPER** administered the collection of loan payments from the borrower and the
7 distribution of such payments to the lenders. **PROSPER** also initiated collection of past due
8 loans from borrowers and assigned delinquent loan accounts to collection agencies. Lenders and
9 borrowers were prohibited from transacting directly and were unable to learn each others' true
10 identities.

11 10. **PROSPER** voluntarily suspended all offers and sales of securities on October 16,
12 2008.

13 11. Oregon residents have financed over 30,000 **PROSPER** loans totaling more than \$2.8
14 million.

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

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

3 13. The **PROSPER** website, the company's exclusive mode of dissemination of
4 information to prospective investors, did not contain financial statements for **PROSPER**, did not
5 disclose that the notes were not registered with the Director and that **PROSPER** might have
6 significant contingent liability for the offer and sale of unregistered securities.

7 **CONCLUSIONS OF LAW**

8 1. The "notes" sold by **PROSPER** to Oregon residents are securities, as defined by
9 ORS 59.015(19)(a).

10 2. **PROSPER** sold securities that were not registered with the Oregon Division of
11 Finance and Corporate Securities in violation of ORS 59.055.

12 3. In connection with the offer or sale of a security to Oregon residents, **PROSPER**
13 either failed to include information or failed to describe in the manner typically required of a
14 securities registrant certain business or loan information including investment risk factors, that
15 would have aided investors, or prospective investors in making an objective decision on whether
16 to invest in the **PROSPER** notes in violation of ORS 59.135.

17 **ORDER**

18 Therefore the Director ORDERS:

19 1. Pursuant to ORS 59.245(4), **PROSPER** will CEASE AND DESIST from offering
20 and/or selling securities to persons in or from Oregon in violation of the Oregon Securities Law,
21 ORS 59.005 et seq and accompanying administrative rules and will comply with the Oregon
22 Securities Law.

23 2. Pursuant to ORS 59.995, **PROSPER** shall pay the sum of \$15,000 in civil penalties to
24 the General Fund of the State Treasury.

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1 3. In the event another state securities regulator determines not to accept **PROSPER'S**
2 state settlement offer, the total amount of the Oregon payment shall not be affected, and shall
3 remain at \$15,000.

4 4. This Order concludes the investigation by the **Director** and any other action that the
5 **Director** could commence under applicable Oregon law as it relates to **PROSPER**, up to and
6 including any activity through November 24, 2008; provided however, that excluded from and
7 not covered by paragraph 1 in this section are any claims by the **Director** arising from or relating
8 to the "Order" provisions contained herein.

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

12 6. If payment is not made by **PROSPER**, or if **PROSPER** defaults in any of its
13 obligations set forth in this Order, the **Director** may vacate this Order, at its sole discretion, upon
14 10 days notice to **PROSPER** and without opportunity for administrative hearing, and commence
15 separate action.

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

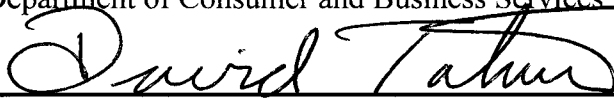
19 8. Nothing herein shall preclude the State of Oregon, its departments, agencies, boards,
20 commissions, authorities, political subdivisions and corporations, other than the **Director** and
21 only to the extent set forth in paragraph 1 in this section, (collectively, "State Entities") and the
22 officers, agents or employees of State Entities from asserting any claims, causes of action, or
23 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal,
24 or injunctive relief against **PROSPER** in connection with unregistered securities sales.

1 9. This Order and any dispute related thereto shall be construed and enforced in
2 accordance with, and governed by, the laws of the Oregon without regard to any choice of law
3 principles.

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

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10 Dated this 19th JUNE, 2009 day of _____ in Salem, Oregon.

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12
13 CORY STREISINGER, Director
14 Department of Consumer and Business Services

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16 David C. Tatman, Administrator
17 Division of Finance and Corporate Securities

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1 **CORPORATE CONSENT TO ENTRY OF ORDER FOR**
2 **PROSPER MARKETPLACE, INC.**
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4 I, Christian A, Larsen, state that I am an officer of Prosper Marketplace, Inc. and I am
5 authorized to act on its behalf; that I have read the foregoing Order and that I know and fully
6 understand the contents hereof; that Prosper Marketplace, Inc. voluntarily consents to the entry
7 of this Order without any force or duress, expressly waiving any right to a hearing in this matter;
8 that Prosper Marketplace, Inc. understands that the Director reserves the right to take further
9 actions to enforce this Order or to take appropriate action upon discovery of other violations of
10 the Oregon Securities Law by Prosper Marketplace Inc.; and that Prosper Marketplace, Inc. will
11 fully comply with the terms and conditions stated herein. Prosper Marketplace, Inc. agrees that it
12 shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal
13 or local tax for any administrative monetary penalty that shall pay pursuant to this Order.
14

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
18 with the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.
19

20 Dated this 3rd day of June, 2009.

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21
22 Prosper Marketplace, Inc.

23 By: [Signature]

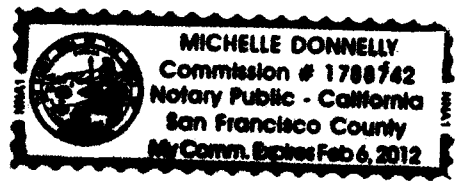
24 Title: President & CEO

1 SUBSCRIBED AND SWORN TO before me this 3rd day of June, 2009

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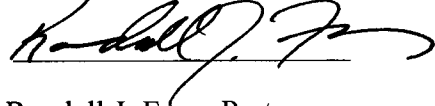


Notary Public



My Commission expires: February 6, 2012

Order Approved as to Form:



Randall J. Fons, Partner

Morrison & Foerster LLP

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