

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1940
ANCHORAGE, ALASKA 99501
PHONE: 907-269-8140

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF:

Prosper Marketplace, Inc.

Respondent.

ADMINISTRATIVE CONSENT ORDER

ORDER NO. 10-04-S

WHEREAS, the Alaska Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Division"), conducted an investigation of Prosper Marketplace, Inc. ("Prosper"), and determined that Prosper has offered and sold securities as defined in AS 45.55.990(32); 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 State of Alaska 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 Alaska Statutes ("AS") 45.55.935 – AS 45.55.940 with respect to this Order;

ITMO: PROSPER MARKETPLACE, INC.
ADMINISTRATIVE CONSENT ORDER

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1 NOW, THEREFORE, the Division, acting under the authority of AS 45.55.010 –
2 AS 45.55.995, the Alaska Securities Act, (“the Act”), 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)
6 that was incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter
7 Street, 22nd Floor, San Francisco, California 94104. Since February 2006 Prosper has held itself
8 out, through its Internet website, www.prosper.com, as an online marketplace for “person to
9 person” lending.

10 2. Prosper has been licensed as a California finance lender (license #605-3227) since
11 December 19, 2005.

12 3. Prosper submitted an application to register securities with the Division on
13 November 7, 2007. As of the date of this order, Prosper does not yet have an active securities
14 registration with the State of Alaska.

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

16 4. Prosper’s lending platform functioned like a double-blind auction, connecting
17 individuals who wish to borrow money, or “borrowers,” with individuals or institutions who wish
18 to commit to purchase loans extended to borrowers, referred to on the platform as “lenders.”
19 Lenders and borrowers registered on the website and created Prosper identities. They were
20 prohibited from disclosing their actual identities anywhere on the Prosper website.

21 5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between
22 \$1,000 and \$25,000 by posting “listings” on the platform indicating the amount they wanted to
23 borrow and the maximum interest rate they were willing to pay. Prosper assigned borrowers a
24 credit grade based on a commercial credit score obtained from a credit bureau, but Prosper did not
25 verify personal information, such as employment and income.

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

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

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

10 9. Prosper administered the collection of loan payments from the borrower and the
11 distribution of such payments to the lenders. Prosper also initiated collection of past due loans
12 from borrowers and assigned delinquent loan accounts to collection agencies. Lenders and
13 borrowers were prohibited from transacting directly and were unable to learn each others' true
14 identities.

15 10. Prosper voluntarily suspended all offers and sales of securities on October 16, 2008.

16 11. Alaska residents have financed Prosper loans totaling more than \$666,963.

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

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

 13. The Prosper website, the company's exclusive mode of dissemination of
information to prospective investors, did not contain financial statements for Prosper, did not

1 disclose that the notes were not registered with the Division, and that Prosper might have
2 significant contingent liability for the offer and sale of unregistered securities.

CONCLUSIONS OF LAW

3 1. The "notes" sold by Prosper to Alaska residents are securities, as defined by
4 AS 45.55.990(32).

5 2. Prosper sold securities that were not registered with the State of Alaska in violation
6 of AS 45.55.070.

7 3. In connection with the offer or sale of a security to residents of the state of Alaska
8 Prosper either failed to include information or failed to describe in the manner typically required of
9 a securities registrant certain business or loan information including investment risk factors that
10 would have aided investors or prospective investors in making an objective decision on whether to
11 invest in the Prosper notes in violation of AS 45.55.010.

ORDER

IT IS HEREBY ORDERED:

12 1. Prosper will CEASE AND DESIST from offering and/or selling securities to
13 persons in or from the state of Alaska in violation of the Act and will comply with the Act.

14 2. Within ten (10) days from the entry of this Order, Prosper shall pay the sum of
15 \$3,724 to the Division, such amount to be restricted to the following specific use by the Division:
16 promoting investor education, investor protection, and compliance with securities laws.

17 3. In the event another state securities regulator determines not to accept Prosper's
18 state settlement offer, the total amount of the Alaska payment shall not be affected, and shall
19 remain at \$3,724.

20 4. This Order concludes the investigation by the Division and any other action that the
21 Division could commence under applicable Alaska law on behalf of the Division as it relates to
22 Prosper, up to and including any activity through November 24, 2008; provided however, that
23 excluded from and not covered by paragraph 1 in this section are any claims by the Division
24 arising from or relating to the "Order" provisions contained herein.

25 5. This Order is entered into solely for the purpose of resolving the referenced
multistate investigation and is not intended to be used for any other purpose; its findings and
conclusions shall not constitute admissions on the part of Prosper for any purpose.

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

4 7. For any person or entity not a party to this Order, this Order does not limit or create
5 any private rights or remedies against Prosper, does not limit or create liability of Prosper, or limit
6 or create defenses of Prosper to any claims.

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

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

16 10. This Order shall be binding upon Prosper and its successors and assigns as well as
17 to successors and assigns of relevant affiliates with respect to all conduct subject to the provisions
18 above and all future obligations, responsibilities, undertakings, commitments, limitations,
19 restrictions, events, and conditions.

20 IT IS SO ORDERED this 11th day of August, 2010.

21 State of Alaska
22 Department of Commerce, Community, and
23 Economic Development
24 Division of Banking and Securities

25 /s/ Lorie L. Hovanec

By: Lorie L. Hovanec, Director

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**CORPORATE CONSENT TO ENTRY OF ORDER FOR
PROSPER MARKETPLACE, INC.**

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

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

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

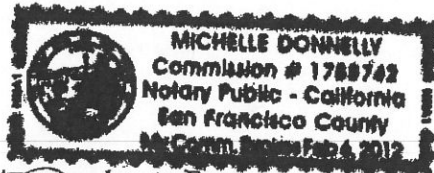
Dated this 30 day of July, 2010.

Prosper Marketplace, Inc.

By: /s/ Randall J. Fons

Title: General Counsel and Secretary

SUBSCRIBED AND SWORN TO before me this 30 day of July, 2010



/s/ Michelle Donnelly

Notary Public

My Commission expires: Aug. 10, 2010

Order Approved as to Form

/s/ Randall J. Fons

Randall J. Fons, Partner
Morrison & Foerster LLP

August 10, 2010

Date