

STATE OF NORTH DAKOTA  
SECURITIES DEPARTMENT

In the Matter of:	)	
	)	
<b>Prosper Marketplace, Inc.,</b>	)	<b>ADMINISTRATIVE</b>
	)	<b>CONSENT ORDER</b>
Respondent.	)	
	)	

.....

WHEREAS, the North Dakota Securities Department conducted an investigation of **Prosper Marketplace, Inc. ("PROSPER")** and determined that **PROSPER** has offered and sold securities as defined in N.D.C.C. § 10-04-02(19); 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 North Dakota 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 North Dakota Securities Department, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under N.D.C.C. § 10-04-12 and N.D.C.C. Chapter 28-32 with respect to this Order;

NOW, THEREFORE, the Securities Commissioner, as administrator of the Securities Act, Chapter 10-04 of the North Dakota Century Code, hereby enters this Order:

### **FINDINGS OF FACT**

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

1. **PROSPER** is a Delaware corporation (Delaware Division of Corporations #3943799) that was incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street, 22<sup>nd</sup> Floor, San Francisco, California 94104. **PROSPER** registered as a foreign business corporation in North Dakota on October 3, 2005, (North Dakota Secretary of State System ID #21564400). Since February 2006 **PROSPER** has held itself out, through its Internet website, [www.prosper.com](http://www.prosper.com), as an online marketplace for "person to person" lending.

2. **PROSPER** has been licensed as a California finance lender (license #605-3227) since December 19, 2005; and as a consumer finance company by the state of North Dakota between March 8, 2006 and August 3, 2007 (ND license #CF101352); and as a money broker by the state of North Dakota since August 3, 2007 (ND license #MB101655). Its former consumer finance license allowed and current money broker license allows **PROSPER**, pursuant to N.D.C.C. Chapters 13-03.1 and 13-04.1 respectively, to make loans to consumers within certain limits and restrictions. Neither a

consumer finance license, nor a money broker license, authorize a licensee to sell securities to North Dakota residents.

3. **PROSPER** submitted an application to register securities in the state of North Dakota on November 7, 2007. As of the date of this order, **PROSPER** does not yet have an active securities registration in North Dakota.

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

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

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

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

7. Individual lenders did not lend money directly to the borrower; rather, the

borrower received a loan from a bank with which **PROSPER** has contracted. (Prior to April of 2008, loans were made directly by **PROSPER**.) The interests in that loan were then sold and assigned through **PROSPER** to the lenders, with each lender receiving an individual non-recourse promissory note.

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

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

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

11. 2,390 North Dakota residents have financed **PROSPER** loans totaling more than \$162,223.99.

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

12. **PROSPER** provided information to lenders concerning the issues noted below, although it did not provide the information in the manner typically required of a securities registrant regarding: details of the company's business model; biographical information about the background and experience of **PROSPER'S** management; certain risk factors in connection with the purchase of a **PROSPER** facilitated note, including the fact that the notes were speculative investments; significant financial risks that investors may be

subjected to when investing in the **PROSPER** notes that could result in a complete loss of their investment, such as the fact that 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 disclose that the notes were not registered with the North Dakota Securities Department, and that **PROSPER** might have significant contingent liability for the offer and sale of unregistered securities.

#### **CONCLUSIONS OF LAW**

1. The "notes" sold by **PROSPER** to North Dakota residents are securities, as defined by N.D.C.C. § 10-04-02(19).
2. **PROSPER** sold securities that were not registered with the North Dakota Securities Department in violation of N.D.C.C. § 10-04-04.
3. In connection with the offer or sale of a security to North Dakota residents, **PROSPER** either failed to include information or failed to describe in the manner typically required of a securities registrant certain business or loan information including investment risk factors, that would have aided investors, or prospective investors in making an objective decision on whether to invest in the **PROSPER** notes in violation of N.D.C.C. § 10-04-15(2).

## ORDER

IT IS HEREBY ORDERED:

1. **PROSPER** will CEASE AND DESIST from offering and/or selling securities to persons in or from the state of North Dakota in violation of the Securities Act, Chapter 10-04 of the North Dakota Century Code, and will comply with the Securities Act.
2. **PROSPER** shall pay the sum of \$906.00 to the North Dakota Securities Department as a civil penalty pursuant to N.D.C.C. § 10-04-16 to be deposited in the general fund of the state treasury.
3. In the event another state securities regulator determines not to accept **PROSPER'S** state settlement offer, the total amount of the North Dakota payment shall not be affected, and shall remain at \$906.00.
4. This Order concludes the investigation by the North Dakota Securities Department and any other action that the North Dakota Securities Department could commence under applicable North Dakota law on behalf of the state of North Dakota as it relates to **PROSPER**, up to and including any activity through November 24, 2008; provided however, that excluded from and not covered by paragraph 1 in this section are any claims by the North Dakota Securities Department arising from or relating to the "Order" provisions contained herein.
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, and its findings and conclusions shall not constitute admissions on the part of **PROSPER** for any purpose.
6. If payment is not made by **PROSPER**, or if **PROSPER** defaults in any of its obligations set forth in this Order, the North Dakota Securities Department may vacate this Order, at its sole discretion, upon 10 days notice to **PROSPER** and without opportunity for administrative hearing, and commence separate action.

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

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

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

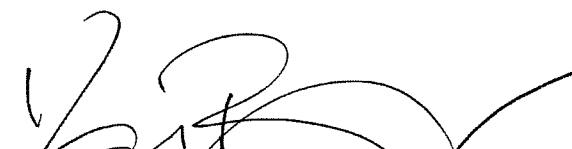
10. This Order shall be binding upon **PROSPER** and its successors and assigns as well as to successors and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events,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

11. This Order shall be effective upon signature of the Commissioner.

IN TESTIMONY WHEREOF, witness my hand and seal this 19<sup>th</sup> day of

May, 2009.



  
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Karen J. Tyler, Securities Commissioner  
Office of the Securities Commissioner  
State Capitol 5th Floor  
600 East Boulevard Ave.  
Bismarck, ND 58505-0510  
(701) 328-2910

**STATE OF NORTH DAKOTA**  
**SECURITIES DEPARTMENT**

In the Matter of:

**Prosper Marketplace, Inc.,**

Respondent.

**CONSENT TO  
ENTRY OF ORDER**

.....

I, Christen A. Larsen, 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 North Dakota Securities Department reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Securities Act, Chapter 10-04 of the North Dakota Century Code, 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.



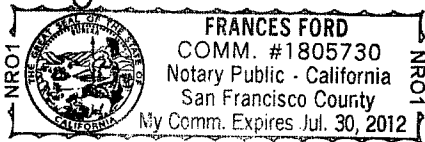
Prosper Marketplace, Inc. has been represented by counsel of its choosing in connection with the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.

Dated this 12<sup>th</sup> day of May, 2009.

Prosper Marketplace, Inc.

By: [Signature]  
Title: President & Chief Executive Officer

SUBSCRIBED AND SWORN TO before me this 12 day of May, 2009.



[Signature]  
Notary Public

My Commission expires:

July 30, 2012

Order Approved as to Form:

[Signature]  
Randall J. Fons, Partner  
Morrison & Foerster LLP

5/14/09  
Date