

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 30, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2009-00045

PROSPER MARKETPLACE, INC.,

Defendant

CONSENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of Prosper Marketplace, Inc. ("Prosper") and determined that Prosper has offered and sold securities as defined in § 13.1-501 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia; and

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

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

Prosper, as part of this settlement, agrees to appropriately register its securities with the Commonwealth of Virginia before making further offers or soliciting sales, and to make certain payments; and

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 Consent Order ("Order") in order to avoid protracted and expensive proceedings in numerous states; and

Prosper, as evidenced by the authorized signature on the consent to the Order below, admits the jurisdiction of the Commission, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under § 13.1-521 A of the Act and § 12.1-39 of the Code of Virginia with respect to this Order.

NOW, THEREFORE, the Commission hereby enters this Order.

I.

**FINDINGS OF FACT**

**Prosper's 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 Virginia on October 12, 2005, with corporate ID F164491. Since February 2006 Prosper has held itself out, through its Internet website, <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. It is not registered with Virginia as a consumer finance lender.

3. Prosper submitted an application to register securities in Virginia on November 8, 2007. As of the date of this Order, Prosper does not yet have an active securities registration in Virginia.

### **Prosper Product Prior to October 16, 2008**

4. Prosper's lending platform functioned like a double-blind auction, connecting individuals who wished to borrow money, or "borrowers," with individuals or institutions who wished 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. Ninety-one Thousand One Hundred Ninety-eight (91,198) Virginia residents have financed Prosper loans totaling more than Eight Million Four Hundred Seventy-seven Thousand Eight Hundred Fifty-seven Dollars (\$8,477,857).

#### **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 Division, and did not disclose that Prosper might have significant contingent liability for the offer and sale of unregistered securities.

## **II.**

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the Act. The "notes" sold by Prosper to Virginia residents are securities, as defined by § 13.1-501 of the Act.

2. Prosper sold securities that were not registered with the Division in violation of § 13.1-507 of the Act.

3. In connection with the offer or sale of a security to Virginia 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 § 13.1-502(2) of the Act.

4. The Commission finds the following relief appropriate and in the public interest.

## **III.**

### **ORDER**

On the basis of the Findings of Fact, Conclusions of Law, and Prosper's consent to the entry of this Consent Order, IT IS HEREBY ORDERED THAT:

1. Prosper shall refrain from offering or selling securities to persons in or from Virginia in violation of the Act, and will comply with the Act in the future.

2. Prosper shall pay the sum of Forty-seven Thousand Three Hundred Thirty-three Dollars (\$47,333) to the Treasurer of Virginia pursuant to § 13.1-521 A of the Act.

3. In the event another state securities regulator determines not to accept Prosper's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at Forty-seven Thousand Three Hundred Thirty-three Dollars (\$47,333).

4. This Order concludes the investigation by the Division and any other action that the Commission could commence under applicable Virginia law on behalf of Virginia 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 Commission 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 Commission may vacate this Order, at its sole discretion, upon ten (10) days notice to Prosper and without opportunity for hearing, or commence a 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 Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the

Commission 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 Commonwealth of Virginia 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.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Randall J. Fons, Partner, Morrison & Foerster LLP, 5200 Republic Plaza, 370 Seventeenth Street, Denver, Colorado 80202-5638; and a copy hereof shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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Defendant

**CONSENT TO ENTRY OF ORDER**

Prosper Marketplace, Inc. ("Prosper") hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Consent Order and fully understands the contents, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Prosper admits the jurisdiction of the State Corporation Commission ("Commission"), neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order; and consents to entry of this Consent Order by the Commission as settlement of the issues contained in this Consent Order.

Prosper states that no force or duress was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

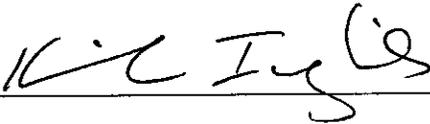
Prosper will fully comply with the terms and conditions stated herein and also understands that the Commission reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Virginia Securities Act by Prosper. Prosper understands that this Consent Order is a public document.

Kirk T. Inglis represents that he is Chief Operating Officer of Prosper and that, as such, has been authorized by Prosper to enter into this Consent Order for and on behalf of Prosper. Prosper 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 monetary penalty that Prosper shall pay pursuant to this  
Consent Order.

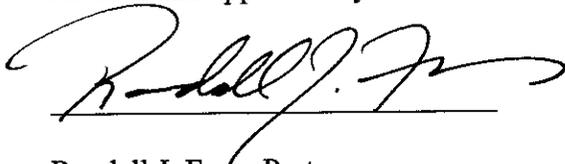
Dated this 23rd day of July, 2009.

Prosper Marketplace, Inc.

By:  \_\_\_\_\_

Title: Chief Operating Officer

As seen and approved by:

 \_\_\_\_\_

Randall J. Fois, Partner  
Morrison & Foerster LLP  
5200 Republic Plaza  
370 Seventeenth Street  
Denver, Colorado 80202-5638

State of California )  
County of San Francisco

Michelle Donnelly, Notary Public

On July 23, 2009 before me, (~~here insert name and title of the officer~~), personally appeared Kirk Inglis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/her/their authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)

