

ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER

IN THE MATTER OF: *

PROSPER MARKETPLACE, INC., * Case No. 2008-0231

Respondent. *

* * * * *

CONSENT ORDER

WHEREAS, the Maryland Division of Securities (the “Division”), pursuant to the authority granted by section 11-701 of the Maryland Securities Act, Title 11, Md. Code Ann., Corps. & Ass’ns (2007 Repl. Vol. and 2008 Supp.) (the “Securities Act” or “Act”), initiated an investigation with regard to apparent violations of the Securities Act by Prosper Marketplace, Inc. (“Prosper”); and

WHEREAS, on the basis of that investigation the Maryland Securities Commissioner (“Commissioner”) has determined that Respondent violated the Act by engaging in acts or practices constituting violations of Sections 11-501 and 11-301 of the Act; and

WHEREAS, this Consent Order is entered into for the purpose of resolving a multi-state investigation in connection with Prosper’s offer and sale of unregistered securities between 2006 and October 2008, and is not intended to be used for any other purpose; 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, without holding a hearing and without trial or adjudication of any issue of fact or law, the Commissioner and Respondent have reached an agreement to resolve this matter;

and

WHEREAS, Respondent waives its right to a hearing and appeal under the Securities Act and the rules and regulations promulgated thereunder with respect to this Consent Order; and

WHEREAS, Respondent, without admitting or denying any findings of fact or conclusions of law, except that Respondent expressly consents to the Commissioner's jurisdiction over the subject matter and personal jurisdiction over it in this proceeding, and consents and agrees to the terms set forth below in the sections captioned Sanctions, Consequences of Violating Consent Order, Modification of Terms of this Consent Order and Jurisdiction Retained; and

WHEREAS, nothing in this Consent Order shall preclude Maryland, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Maryland Division of Securities as set forth herein, (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; and

WHEREAS, this Consent Order concludes the investigation by the Division and, except for the terms of this Consent Order, concludes any action that the Division could commence under the Maryland Securities Act as it relates to Prosper, up to and including any activity through November 24, 2008; and

WHEREAS, for any person or entity not a party to this Consent Order, nothing in this Consent Order limits or creates any private rights or remedies against Prosper, limits or creates liability of Prosper, or limits or creates defenses of Prosper to any claims; and

WHEREAS, this Consent Order shall be binding upon Prosper and its successors and

assigns as well as upon successors and assigns of relevant affiliates with respect to all conduct subject to the provisions of this Consent Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, pursuant to Section 11-701.1 of the Act, it is hereby ordered:

THE COMMISSIONER FINDS:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding and over Respondent pursuant to section 11-701.1 of the Act.

II. FINDINGS OF FACT

Respondent Licensing/Registration History

2. 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, 22nd Floor, San Francisco, California 94104. Prosper registered as a foreign business corporation in Maryland on October 20, 2005 (ID number F10919942). Since February 2006, Prosper has held itself out, through its Internet website, www.prosper.com, as an online marketplace for “person to person” lending.

3. Prosper has been licensed as a California finance lender (license #605-3227) since December 19, 2005 and as a consumer loan company in Maryland from July 27, 2006 until June 24, 2009. Its consumer loan license allowed Prosper, pursuant to the Maryland Consumer Loan Law, Commercial Law Art., Title 12, Subtitle 3, to make loans to consumers within certain limits. A consumer loan license does not authorize a licensee to sell securities to Maryland residents.

4. Prosper submitted an application to register securities in Maryland on about

November 8, 2007. As of the date of this order, Prosper does not yet have an active securities registration in Maryland.

Prosper Product Prior to October 16, 2008

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 51,897 notes purchased by Maryland residents have financed Prosper loans totaling more than \$5,141,456.

Prosper's Omissions in Connection with Sales to Investors

13. 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.

14. 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 that Prosper might have significant contingent liability for the offer and sale of unregistered securities.

III. CONCLUSIONS OF LAW

The Commissioner concludes that:

15. The “notes” sold by Prosper to Maryland residents are securities, as defined by Section 11-101 of the Maryland Securities Act.

16. Prosper sold securities that were not registered with the Division in violation of Section 11-501 of the Maryland Securities Act.

17. In connection with the offer or sale of a security to Maryland 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 Section 11-301 of the Maryland Securities Act.

IV. SANCTIONS

NOW, THEREFORE, IT IS HEREBY ORDERED, and respondent consents and agrees that:

18. Respondent shall permanently cease and desist violating the Act.

19. Prosper shall appropriately register its securities with the Division before making further offers or soliciting sales into or from Maryland; and

20. Respondent shall pay to the Office of the Maryland Attorney General within ten days after entry of this Consent Order a civil monetary penalty of \$28,706. In the event another state securities regulator determines not to accept Prosper’s state settlement offer, the total amount of the payment to the Office of the Maryland Attorney General shall not be affected, and shall remain at

\$28,706.

21. Respondent shall comply fully with the Securities Act and the regulations promulgated thereunder.

V. CONSEQUENCES OF VIOLATION OF CONSENT ORDER

22. If Respondent fails to comply with any term of this Consent Order, the Division may institute administrative or judicial proceedings against the Respondent to enforce this Consent Order, to sanction Respondent for violating an Order of the Commissioner, or to vacate this order, and may take any other action authorized under the Act or any other applicable law, including the issuance of fines or penalties as provided by the Act. Respondent will receive 10 days notice and have an opportunity to argue that it has not materially violated the terms of this Consent Order. For the purpose of determining sanctions in any such administrative or judicial proceedings, the Findings of Fact and violations of the Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against Respondent. To ensure that Respondent complies with this Consent Order, Respondent hereby waives any limitations imposed by Section 5-107 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland on the Division's ability to bring an enforcement action for fines in court under this Consent Order.

VI. MODIFICATION OF TERMS OF THIS CONSENT ORDER

23. The terms of this Consent Order may only be modified by a subsequent order issued by the Commissioner.

VII. JURISDICTION RETAINED

24. Jurisdiction shall be retained by the Commissioner for the purpose of enabling any party to this Consent Order to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

25. The provisions of this Consent Order shall become binding when this Consent Order has been executed by each party and is issued by the Commissioner.

26. In the event that judicial intervention in this matter is sought by any party, Respondent consents to the jurisdiction of the Circuit Court for Baltimore City over any such proceeding and as to itself, and agrees that any dispute shall be construed and enforced in accordance with, and governed by, the laws of Maryland without regard to any choice of law principles.

DATE OF THIS ORDER:

SO ORDERED:

November 13, 2009

**Commissioner's Signature is
on File with Original Document**

Melanie Senter Lubin
Securities Commissioner

CONSENTED TO:

Prosper Marketplace, Inc.

By: _____ /S/

Print name: _____

Title: _____

On this 10th day of November, 2009, personally appeared _____ signer of the foregoing Consent Order, who did duly acknowledge to me that he was authorized to execute the same on behalf of Prosper Marketplace, Inc., and acknowledged the same to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal:

Order Approved as to Form:

_____/S/_____
Randall J. Fons
Morrison & Foerster LLP

11/12/2009
Date