

**BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS**

In the matter of:)	
)	
Prosper Marketplace, Inc.)	Docket No. 09 E 018
)	KSC No. 2009-5515
Respondent.)	
<hr style="width:45%; margin-left:0;"/>		
A proceeding pursuant to K.S.A. 17-12a604		

Consent Order

WHEREAS, the Office of the Kansas Securities Commissioner conducted an investigation of **Prosper Marketplace, Inc.** (“**PROSPER**”) and determined that **PROSPER** has offered and sold securities as defined in K.S.A. 17-12a102(28) 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 Kansas 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 Office of the Kansas Securities Commissioner voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing under K.S.A. 17-12a604 and appeal under K.S.A. 17-12a609 with respect to this Order;

NOW, THEREFORE, the Office of the Kansas Securities Commissioner as administrator of the Kansas Uniform Securities Act 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, 22nd Floor, San Francisco, California 94104. **PROSPER** registered as a foreign business corporation in the State of Kansas on October 3, 2005 (Kansas Business Entity ID #3845724). Since February 2006 **PROSPER** has held itself out, through its Internet website, 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 supervised lender by Kansas since January 9, 2006, (jurisdiction license/registration #SL382). Its consumer finance license allows **PROSPER**, pursuant to K.S.A. 9-2204, to make loans to consumers within certain limits. A consumer finance license does not authorize a licensee to sell securities to Kansas

residents.

3. **PROSPER** submitted an application to register securities in Kansas on November 8, 2007. As of the date of this order, **PROSPER** does not yet have an active securities registration in Kansas.

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. 11,805 Kansas residents have financed **PROSPER** loans totaling more than \$951,183.26.

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 Office of the Kansas Securities Commissioner, 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 Kansas residents are securities, as defined by K.S.A. 17-12a102(28).

2. **PROSPER** sold securities that were not registered with the Office of the Kansas Securities Commissioner in violation of K.S.A. 17-12a301.

3. In connection with the offer or sale of a security to Kansas' 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 K.S.A. 17-12a501.

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 Kansas in violation of the Kansas Uniform Securities Act and will comply with the Kansas Uniform Securities Act.

2. **PROSPER** shall pay the sum of \$5,311.00 to the Office of the Kansas Securities Commissioner Investor Education Fund.

3. In the event another state securities regulator determines not to accept **PROSPER'S** state settlement offer, the total amount of the Kansas payment shall not be affected, and shall remain at \$5,311.00.

4. This Order concludes the investigation by the Office of the Kansas Securities Commissioner and any other action that the Office of the Kansas Securities Commissioner could commence under applicable Kansas law on behalf of Kansas 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 Office of the Kansas Securities Commissioner 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 Office of the Kansas Securities Commissioner 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 Kansas, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Office of the Kansas Securities Commissioner 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 Kansas 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.

IT IS SO ORDERED BY THE COMMISSIONER.

Entered at Topeka, Kansas, this 23rd day of June, 2009.

/s/ Chris Biggs
Chris Biggs
Securities Commissioner
State of Kansas

CORPORATE CONSENT TO ENTRY OF ORDER FOR

PROSPER MARKETPLACE, INC.

I, Kirk Inglis, 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 Office of the Kansas Securities Commissioner reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Kansas Uniform Securities 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 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 15th day of June, 2009.

Prosper Marketplace, Inc.

By /s/ Kirk Inglis

Title: _____

SUBSCRIBED AND SWORN TO before me this 15th day of June, 2009.

/s/ Michelle Donnelly

Notary Public

My Commission expires: 2/6/2012

Order Approved as to Form:

/s/ Randall J. Fons
Randall J. Fons, Partner
Morrison & Foerster LLP

6/18/09
Date