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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation
of the Securities Act of Washington by:

Prosper Marketplace, Inc.

Respondent.

Order Number S-06-210-09-CO01

CONSENT ORDER

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INTRODUCTION

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WHEREAS, the Department of Financial Institutions, Securities Division, conducted an investigation of Prosper Marketplace, Inc. (“PROSPER”) and determined that PROSPER has offered and sold securities as defined in RCW.21.20.005(10) and (12) ; 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 Washington 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”); and

WHEREAS, PROSPER, as evidenced by the authorized signature on the consent to the Order below,

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CONSENT ORDER

1 admits the jurisdiction of Department of Financial Institutions, Securities Division, voluntarily consents to
2 the entry of this Order and elects to permanently waive any right to a hearing and appeal under RCW
3 21.20.440 and RCW 34.05 with respect to this Order;

4 NOW, THEREFORE, the Securities Administrator, as administrator of the Securities Act of
5 Washington, hereby enters this Order:

6 FINDINGS OF FACT

7 Part 1: Respondent Licensing/Registration History

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9 1. PROSPER is a Delaware corporation (Delaware Division of Corporations #3943799) that was
10 incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street, 22nd Floor,
11 San Francisco, California 94104. PROSPER registered as a foreign business corporation in Washington
12 State on April 16, 2007 (UBI Number 602540534). Since February 2006 PROSPER has held itself out,
13 through its Internet website, www.Prosper Marketplace, Inc., as an online marketplace for “person to
14 person” lending.

15 2. PROSPER has been licensed as a California finance lender (license #605-3227) since December 19,
16 2005 and as a consumer loan company by Washington State since November 18, 2005 (license # 520-CL-
17 29045). Its consumer loan company license allows PROSPER, pursuant to Chapter 31.04 RCW, to make
18 loans to consumers within certain limits. A consumer loan company license does not authorize a licensee
19 to sell securities to Washington State residents.

20 3. PROSPER submitted an application to register securities in Washington State on November 5, 2007.
21 As of the date of this order, PROSPER is not registered to offer or sell securities in the State of
22

1 Washington.

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

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

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

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

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

22 8. Since the inception of its platform in January 2006, PROSPER has initiated approximately \$174

1 million in loans nationwide. PROSPER collected an origination fee from each borrower of one to three
2 percent of loan proceeds, and collected servicing fees from each lender from loan payments at an annual
3 rate of one percent of the outstanding principal balance of the notes.

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

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

9 11. Approximately 1,860 Washington State residents have financed PROSPER loans totaling
10 more than \$6,452,422.

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

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13 12. PROSPER provided information to lenders concerning the issues noted below, although it
14 did not provide the information in the manner typically required of a securities registrant regarding: details
15 of the company's business model; biographical information about the background and experience of
16 PROSPER'S management; certain risk factors in connection with the purchase of a PROSPER facilitated
17 note, including the fact that the notes were speculative investments; significant financial risks that
18 investors may be subjected to when investing in the PROSPER notes that could result in a complete loss of
19 their investment, such as the fact that borrowers may not fulfill their obligations to make payments for
20 reasons of death or incapacity, bankruptcy, or inability to pay; information concerning PROSPER's status
21 as a development stage company with a limited operating history; and the possibility that PROSPER could

1 cease operations at any time due to the failure to raise additional capital, because of a lack of profitability,
2 or because of regulatory concerns.

3 13. The PROSPER website, the company's exclusive mode of dissemination of information to
4 prospective investors, did not contain financial statements for PROSPER, did not disclose that the notes
5 were not registered with the Washington State Securities Division, and that PROSPER might have
6 significant contingent liability for the offer and sale of unregistered securities.

7 Based upon the above Findings of Fact, the following Conclusions of Law are made:

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9 **CONCLUSIONS OF LAW**

10 1. The offer and/or sale of the investment described above constitutes the offer and/or sale of a
11 security as defined in RCW 21.20.005(10) and (12).

12 2. The offer and/or sale of said securities is in violation of RCW 21.20.140 because the
13 securities were not registered for sale in the state of Washington.

14 3. The offer and/or sale of said securities was made in violation of RCW 21.20.010 because
15 Respondent made untrue statements of material facts or omitted to state material facts necessary in order to
16 make the statements made, in the light of the circumstances under which they were made, not misleading.

17 **CONSENT ORDER**

18 Based upon the foregoing and finding it in the public interest:

19 IT IS AGREED AND ORDERED that Respondent, Prosper Marketplace, Inc. and its
20 agents and employees, each shall cease and desist from offering or selling securities in violation of RCW
21 21.20.140, the securities registration section of the Securities Act of Washington.

1 IT IS FURTHER AGREED AND ORDERED that Respondent, Prosper Marketplace, Inc.,
2 and its agents and employees, each shall cease and desist from violating RCW 21.20.010, the anti-fraud
3 section of the Securities Act of Washington.

4 IT IS FURTHER AGREED AND ORDERED that PROSPER shall pay a \$36,025 fine to the
5 state of Washington.

6 In the event another state securities regulator determines not to accept PROSPER'S state
7 settlement offer, the total amount of the Washington State payment shall not be affected, and shall remain
8 at \$36,025.

9 This Order concludes the investigation by the Securities Division and any other action that the
10 Securities Division could commence under applicable state of Washington law on behalf of state of
11 Washington as it relates to PROSPER, up to and including any activity through November 24, 2008.

12 This Order is entered into solely for the purpose of resolving the above referenced matter and is not
13 intended to be used for any other purpose, and its findings and conclusions shall not constitute admissions on
14 the part of PROSPER for any purpose.

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

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

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

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

4 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Order.

5 IT IS FURTHER AGREED that in consideration of the foregoing Respondent Prosper
6 Marketplace, Inc., waives its rights to a hearing in this matter and judicial review of this order.

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8 SIGNED this 12th day of June, 2009.

9 Signed by:

10 Prosper Marketplace, Inc.

11
12 By Kirk Inglis
Name of Signer

13 CFO
14 Title

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16 Order Approved as to Form:

17 _____
18 Randall J. Fons, Partner
Morrison & Foerster LLP

_____ Date

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21 SIGNED and ENTERED this 22nd day of June, 2009

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Michael E. Stevenson

MICHAEL E. STEVENSON
Securities Administrator

Approved by:

Presented by:

Suzanne Sarason

Janet So

Suzanne Sarason
Chief of Enforcement

Janet So
Financial Legal Examiner

Reviewed by:

Martin Cordell

Martin Cordell
Financial Legal Examiner Supervisor