

1 Michael Winsor
Special Assistant Attorney General
Montana State Auditor's Office
2 840 Helena Avenue
Helena, MT 59601
3 (406) 444-2040
4 Attorney for the Securities Department

5 **BEFORE THE MONTANA STATE AUDITOR AND COMMISSIONER OF SECURITIES**
6 **STATE OF MONTANA**

7 In the matter of)
8 **PROSPER MARKETPLACE INC.**) CAUSE NO: SEC-2009-26
9 Respondent.) **CONSENT AGREEMENT AND FINAL**
10) **ORDER**

11 _____
12 Consent Agreement dated this 17th day of May, 2009, between the
13 Montana Securities Department (Department), acting pursuant to the authority of the Securities Act
14 of Montana, Mont. Code Ann. § 30-10-101, *et seq.* and Mont. Code Ann. § 2-4-603, and Prosper
15 Marketplace Inc. (Prosper).

16 WHEREAS, the Department conducted an investigation of Prosper and determined that
17 Prosper has offered and sold securities as defined in Mont. Code Ann § 30-10-103(22)(a); and

18 WHEREAS, a number of state regulators coordinated investigations into Prosper's
19 activities in connection with unregistered securities offered and sold between 2006 and October
20 2008; and

21 WHEREAS, Prosper has cooperated with regulators conducting the investigations by
22 responding to inquiries, providing documentary evidence and other materials, and halting further
23 offers and sales until the securities are appropriately registered; and

24 WHEREAS, Prosper, as part of this settlement agrees to appropriately register its securities
25 with Montana Department of Securities before making further offers or soliciting sales, and to
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1 make certain payments; and

2 WHEREAS, Prosper neither admits nor denies the Findings of Fact and Conclusions of
3 Law, but has agreed to resolve the investigations relating to its offers and sales of unregistered
4 securities through this Consent Agreement and Final Order (the "Order") in order to avoid
5 protracted and expensive proceedings in numerous states; and

6 WHEREAS, Prosper, as evidenced by the authorized signature on the consent to the Order
7 below, admits the jurisdiction of the Department, voluntarily consents to the entry of this Order and
8 elects to permanently waive any right to a hearing and appeal under Mont. Code Ann. § 30-10-308,
9 with respect to this Consent Agreement and Final Order;

10 NOW, THEREFORE, the Montana State Auditor and Commissioner of Securities, by and
11 through the Department, as administrator of the Securities Act of Montana, Mont. Code Ann. § 30-
12 10-101, *et seq.*, hereby enters this Order:

14 FINDINGS OF FACT

15 Part 1: Respondent Licensing/Registration History

16 1. Prosper is a Delaware corporation (Delaware Division of Corporations #3943799) that was
17 incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street, 22nd
18 Floor, San Francisco, California 94104. Prosper registered as a foreign business corporation in
19 Montana on October 4, 2005 (Montana corporation #F046943). Since February 2006, Prosper has
20 held itself out through its Internet website, www.prosper.com, as an online marketplace for "person
21 to person" lending.

22 2. Prosper has been licensed as a California finance lender (license #605-3227) since
23 December 19, 2005, and as a consumer loan company by Montana since March 2, 2006 (Montana
24 license/registration #1008). Its consumer loan license allows Prosper, pursuant to Mont. Code Ann.
25 § 32-5-101, *et seq.*, to make loans to consumers within certain limits. A consumer finance license
26 does not authorize a licensee to sell securities to Montana residents.

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

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

6 11. Montana residents have financed 4,479 Prosper loans totaling more than \$396,510.29.

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

8 12. Prosper provided information to lenders concerning the issues noted below, although it did
9 not provide the information in the manner typically required of a securities registrant regarding:
10 details of the company's business model; biographical information about the background and
11 experience of Prosper's management; certain risk factors in connection with the purchase of a
12 Prosper facilitated note, including the fact that the notes were speculative investments; significant
13 financial risks that investors may be subjected to when investing in the Prosper notes that could
14 result in a complete loss of their investment, such as the fact that borrowers may not fulfill their
15 obligations to make payments for reasons of death or incapacity, bankruptcy, or inability to pay;
16 information concerning Prosper's status as a development stage company with a limited operating
17 history; and the possibility that Prosper could cease operations at any time due to the failure to
18 raise additional capital, because of a lack of profitability, or because of regulatory concerns.

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20 13. The Prosper website, the company's exclusive mode of dissemination of information to
21 prospective investors, did not contain financial statements for Prosper, did not disclose that the
22 notes were not registered with the Department, and that Prosper might have significant contingent
23 liability for the offer and sale of unregistered securities.
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CONCLUSIONS OF LAW

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2 1. The State Auditor is the Commissioner of Securities (Commissioner) pursuant to Mont.
3 Code Ann. § 30-10-107.
- 4 2. The administration of the Securities Act of Montana, Mont. Code Ann. Title 30, Chapter
5 10, Parts 1-3, is under the supervision and control of the Commissioner.
- 6 3. The Securities Act of Montana shall be construed to protect investors, persons engaged
7 in securities transactions, and the public interest according to Mont. Code Ann. § 30-10-107.
- 8 4. The Commissioner and Department have jurisdiction over this matter pursuant to Mont.
9 Code Ann. § 30-10-107.
- 10 5. The Securities Act of Montana authorizes the Department to regulate: 1) the offers,
11 sales, and purchases of securities; 2) those individuals and entities offering and/or selling
12 securities; and 3) those individuals and entities transacting business as investment advisors within
13 the state of Montana. Mont. Code Ann. § 30-10-101, *et seq.*
- 14 6. The “notes” sold by Prosper to Montana residents are securities, as defined by Mont.
15 Code Ann. § 30-10-103(22)(a).
- 16 7. Prosper sold securities that were not registered with the Department in violation of
17 Mont. Code Ann. § 30-10-202.
- 18 8. In connection with the offer or sale of a security to Montana residents, Prosper
19 either failed to include information or failed to describe in the manner typically required of a
20 securities registrant certain business or loan information, including investment risk factors, that
21 would have aided investors or prospective investors in making an objective decision on whether
22 to invest in the Prosper notes in violation of Mont. Code Ann. § 30-10-301(1)(b).
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ORDER

IT IS HEREBY ORDERED:

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3 1. Prosper will CEASE AND DESIST from offering and/or selling securities to persons in or
4 from Montana in violation of Mont. Code Ann. §§ 30-10-202 and 30-10-301(1)(b), and will comply
5 with Mont. Code Ann. § 30-10-101, *et seq.*

6 2. Within ten (10) days after the date of this Order, Prosper shall pay the sum of Two
7 Thousand Two Hundred and Fourteen Dollars (\$2,214) to the State of Montana to be deposited into
8 the Montana general fund. Payment shall be made payable to the State of Montana, sent to the
9 State Auditor's Office, attention to Michael Winsor, 840 Helena Avenue, Helena, Montana, 59601.

10 3. In the event another state securities regulator determines not to accept Prosper's state
11 settlement offer, the total amount of the Montana payment shall not be affected, and shall remain at
12 \$2,214.

13 4. This Order concludes the investigation by the Montana Securities Department and any other
14 action that the Department could commence under applicable Montana law on behalf of the State of
15 Montana as it relates to Prosper, up to and including any activity through November 24, 2008;
16 provided however, that excluded from and not covered by paragraph 1 in this section are any
17 claims by the Department arising from or relating to the "Order" provisions contained herein.

18 5. This Order is entered into solely for the purpose of resolving the referenced multistate
19 investigation, and is not intended to be used for any other purpose, and its findings and conclusions
20 shall not constitute admissions on the part of Prosper for any purpose.

21 6. If payment is not made by Prosper, or if Prosper defaults in any of its obligations set forth
22 in this Order, the Department may vacate this Order, at its sole discretion, upon 10 days notice to
23 Prosper and without opportunity for administrative hearing, and commence separate action.

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

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

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

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

14 DATED this 19th day of May, 2009.

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17 BY ORDER OF MONICA J. LINDEEN
18 State Auditor and Securities Commissioner

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20 By: 
21 LYNNE EGAN
22 Deputy Securities Commissioner
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**CORPORATE CONSENT TO ENTRY OF ORDER FOR
PROSPER MARKETPLACE, INC.**

I, Christon A. Larson 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 Department reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Mont. Code Ann. § 30-10-101 *et seq.*, 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.

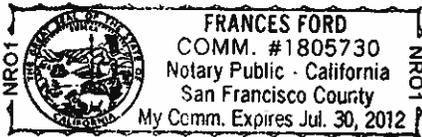
Prosper Marketplace Inc. has been represented by counsel of its choosing in connection with the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.

Dated this 12th 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.



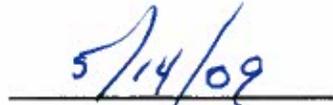
Frances Ford
(Signature)
Frances Ford
(Printed Name)
Notary Public for the State of California
Residing at 4724 Harrison St. SFO CA 94107
My Commissioner expires: July 30, 2012

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ORDER APPROVED AS TO FORM:



Randall J. Fons, Partner
Morrison & Foerster LLP



Date