

BEFORE THE SECURITIES COMMISSIONER

STATE OF COLORADO

Order No. 10-6-05

CONSENT ORDER

IN THE MATTER OF PROSPER MARKETPLACE, INC.,

Respondent.

THIS MATTER is before Fred J. Joseph, Securities Commissioner for the State of Colorado ("Securities Commissioner"), on the Stipulation for Consent Order between the Staff of the Colorado Division of Securities ("Division") and Respondent Prosper Marketplace, Inc., ("Prosper"). After reviewing the Stipulation, grounds therein, and further being advised in the premises, the Securities Commissioner makes the following Findings of Fact and Conclusions of Law as follows:

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. 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. Its consumer finance license allows Prosper to make loans to consumers within certain limits. A consumer finance license does not authorize a licensee to sell securities to Colorado residents.

3. Prosper submitted an application to register securities in Colorado on November 6, 2007. As of the date of this order, Prosper does not yet have an active securities registration in Colorado.

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. 1049 Colorado residents have financed Prosper loans totaling more than \$3,030,000.00.

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 Division, 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 Colorado residents are securities, as defined by § 11-51-201(17).
2. Prosper sold securities that were not registered with the Division in violation of § 11-51-301, C.R.S.
3. In connection with the offer or sale of a security to Colorado 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 § 11-51-501, C.R.S.

ORDER

IT IS HEREBY ORDERED:

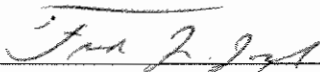
1. Prosper will CEASE AND DESIST from offering and/or selling securities to persons in or from the Colorado in violation of § 11-301, C.R.S. and will comply with the Colorado Securities Act.
2. Prosper shall pay the sum of \$19,900.00 to the Securities Commissioner in the form of a certified or bank check made out to the "Colorado Division of Securities," which funds shall be deposited in the General Fund for the State of Colorado.
3. In the event another state securities regulator determines not to accept Prosper's state settlement offer, the total amount of the Colorado payment shall not be affected, and shall remain at \$19,900.00.
4. This Order concludes the investigation by the Division and any other action that the Division or the Securities Commissioner could commence under applicable Colorado law on behalf of Colorado 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 Division 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 Securities Commissioner may vacate this Order, at his 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 Colorado, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the 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 Colorado 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.

Dated this 21st day of July, 2009.



FRED J. JOSEPH
Securities Commissioner