Via Electronic Mail April 22, 2022

Andrea Seidt
Section Chair

Jeff Soderstedt
Project Group Chair

North American Securities Administrators Association, Inc.
750 First Street NE, Suite 1140
Washington, DC 20002

Re: REQUEST FOR PUBLIC COMMENT ON PROPOSED STATEMENT OF POLICY REGARDING PEER-TO-PEER LENDING

To Whom It May Concern:

Prosper Marketplace, Inc. ("PMI") and Prosper Funding LLC ("PFL," and together with PMI, "Prosper") submit this letter in response to the North American Securities Administrators Association, Inc. ("NASAA") proposed Statement of Policy Regarding Peer-to-Peer Lending (the "Proposed Statement"), which was released on March 23, 2022 (the "Release"). We thank NASAA for the opportunity to respond to the Proposed Statement.

1. Introduction.

Prosper believes that peer-to-peer lending platforms ("Lending Platforms"), as non-traditional lending options, foster a more inclusive financial system that benefits both borrowers and investors. With respect to borrowers, peer-to-peer lending platforms expand access to credit for individuals and communities that have been traditionally underserved by banks. Our investors value the debt securities issued through our Lending Platform as alternative, cash-producing, diversified investments that also have pro-social benefits. A portion of Prosper's investors started out as borrowers and view the loan investment opportunity as a means to "pay-it-back" by investing in a borrower once the investor has the funds and ability to do so.

While Prosper supports the overall policy goals of the Proposed Statement regarding investor protection, we also believe, as explained herein, that the guidelines outlined in the Policy Statement are prescriptive in ways that will stifle competition and robust borrower and investor participation in the peer-to-peer lending marketplace. First, the Proposed Statement would ultimately limit credit access for borrowers best suited for a non-traditional lending option, as the Proposed Statement outlines certain underwriting guidelines and other requirements for borrowers that would require Lending Platforms to deny otherwise qualified borrowers. Second, the Proposed Statement would block a meaningful population of investors from the ability to invest in a unique and valued alternative investment, imposing on retail investors certain enhanced suitability requirements that are customarily limited to accredited investors.

Prosper believes that NASAA should exempt SEC regulated Lending Platforms from the requirements outlined under the Proposed Statement, as the existing framework of state securities and licensing laws and agencies, and federal regulations and agencies such as the U.S. Securities and Exchange Commission (the "SEC"), the Federal Trade Commission, and the

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Consumer Financial Protection Bureau, among others, adequately addresses the risks and concerns outlined in the Proposed Statement. In addition, Prosper believes NASAA should revise the Proposed Statement to provide greater flexibility for Lending Platforms to establish reasonable policies and procedures to mitigate risks for investors while still being able to provide broad access to credit to qualified borrowers.

2. Company background and summary.

Prosper is a pioneer of peer-to-peer lending in the U.S. and first launched its personal loan lending product in 2006. PFL operates a Lending Platform that enables individuals to borrow money and investors to purchase borrower payment dependent notes ("Notes") issued and sold by PFL, the proceeds of which facilitate the funding of the unsecured, personal loans made to borrowers (the "Borrower Loans"). PFL is a wholly-owned subsidiary of PMI. All Borrower Loans are originated and funded by WebBank, an FDIC-insured, state chartered industrial bank organized under the laws of Utah ("WebBank"). Our marketplace facilitated $1.9 billion in Borrower Loan originations during the year ended December 31, 2021, and as of December 31, 2021, $20.1 billion in Borrower Loan originations since launch.[1] Prosper is currently open to investors in 30 states and the District of Columbia, and borrowers in 48 states and the District of Columbia.

Loan Listing Process

Prosper has followed a robust set of underwriting criteria, outlined in a joint WebBank-Prosper Credit Policy ("Credit Policy"), which apply to all loans that originate through our marketplace and which may not be changed without WebBank's consent. All borrowers who request Borrower Loans are subject to the following minimum eligibility criteria: (1) have at least a 640 FICO 08 score, (2) have fewer than five credit bureau inquiries (after excluding duplicate inquiries) within the last 6 months, (3) have an annual income greater than $0, (4) have a debt-to-income ratio of no more than 50%, (5) have at least three open trades reported on their credit report, and (6) have not filed for bankruptcy within the last 12 months.

A borrower who wishes to obtain a loan through our marketplace must apply and, if accepted pursuant to the Credit Policy, post a loan listing to our marketplace. If a listing receives enough investor commitments to be funded and the borrower passes verification requirements, WebBank will originate the loan requested and then sell it to PFL. Each Note issued and sold by PFL comes attached with a PMI management right issued by PMI in PMI's capacity as servicer of the Note. Each loan listing is assigned a Prosper Rating, a letter that indicates the expected level of risk associated with the listing that is based primarily on the historical performance of Borrower Loans with similar characteristics and which incorporates a borrower's credit score. Loan listings also include, among other information, the following:

- The number of accounts a borrower is late on a payment;
- Total past-due amount the borrower owes on all delinquent accounts;
- The number of 90+ days past due delinquencies on the borrower's credit report;

[1] Investors invest in Borrower Loans through two channels: (i) investors purchase Notes from PFL, the payments of which are dependent on the payments made on the corresponding Borrower Loan (the "Note Channel"); and (ii) accredited and institutional investors purchase a Borrower Loan in their entirety directly from PFL (the "Whole Loan Channel").

- The number of public records on the borrower's credit report over the last 24 months and over the last 10 years;
- The number of inquiries made by creditors to the borrower's credit report in the last 6 months;
- The total balance on all of the borrower's open revolving credit lines;
- The borrower's self-reported income range, occupation, employment status, and intended use of funds; and
- The borrower's combined Debt-to-Income percentage (including the amount of the loan through Prosper).

Note Registration Process

The securities that Prosper offers are registered with the SEC, subjecting Prosper to ongoing SEC regulation, and accompanying SEC disclosure and reporting requirements. The processes and disclosures implemented by Prosper today have been shaped by years of SEC vetting, through conversations with the SEC and the SEC comment letter process. Prosper has an extensive history of working closely with the SEC to structure its Lending Platform, processes and disclosures with an eye towards investor protection.

Each time Prosper files a continuous shelf offering on Form S-1 with the SEC, Prosper must also file registration by coordination applications in each state in which PFL and PMI are currently operating and intend to offer securities. States vary widely in their registration by coordination application requirements, and Prosper must send a separate application to each of the 31 states and districts in which we currently operate. Furthermore, each state has a different process of reviewing the applications; while some states will deem the registration by coordination application effective upon effectiveness of the registration statement, other states conduct a full and independent review of the registration by coordination application materials, which can lead to several rounds of back and forth between Prosper and the individual state.

Prosper has been successfully operating its Lending Platform for over 15 years and has registered its Notes within the SEC and state legal framework since 2009. During that period, both Prosper's public filing disclosure and Lending Platform experience for investors and borrowers has been refined through its compliance and discussions with the SEC and state securities agencies. [2]

3. **The Proposed Statement would overly restrict the ability of Lending Platforms to operate in the lending space, thereby stifling competition and reducing borrowing options for borrowers and investment options for investors.**

Requirements for Lending Platforms—Net Worth (Section III.A) and Unsound Financial Condition (Section III.B)

[2] Our most recent SEC filings are available through the following links: For our Registration Statement on Form S-1, see Prosper S-1; and for our Annual Report on Form 10-K, see Prosper 10-K.

We respectfully recommend to NASAA that: (i) the Net Worth and Unsound Financial Condition requirements set forth in the Proposed Statement should not apply to SEC registered companies, and (ii) for Lending Platforms such as Prosper that have mitigated such going-forward concerns by securing backup servicing arrangements, neither the Net Worth or the Unsound Financial Condition requirements should apply.

Net Worth (Section III.A) and Unsound Financial Condition (Section III.B) Requirements

The Proposed Statement includes a requirement that (i) the Lending Platform's tangible net worth must be equal to at least five percent of the face value of the outstanding loans originated through the Lending Platform and (ii) the Lending Platform must not be in "Unsound Financial Condition," as such term is defined under the NASAA Statement of Policy Regarding Corporate Securities Definitions. The Unsound Financial Condition designation would apply to entities with any of the following: (x) an auditor's report accompanying the issuer's financial statements contains an explanatory paragraph or qualification regarding the issuer's ability to continue as a going concern; or (y)(a) an accumulated deficit; (b) a negative shareholder equity; (c) the inability to satisfy current obligations as they come due; or (d) negative cash flow. The foregoing conditions would potentially disqualify certain Lending Platforms which are new entrants into the peer-to-peer lending industry, particularly with respect to the negative shareholder equity and negative cash flow clauses of the Unsound Financial Condition definition above.

Use of Mitigating Factors related to Financial Condition Requirements

We respectfully recommend that NASAA revise the Proposed Statement to expressly allow states to consider the existence of additional protections where a Lending Platform may otherwise be ineligible under the requirements discussed above. For example, Prosper has structured its business to help ensure that PFL, as the holder of the loans underlying the borrower payment dependent notes, would qualify for bankruptcy remote treatment. PFL has been organized and is operated in a manner that is intended (i) to minimize the likelihood that it will become subject to bankruptcy proceedings, and (ii) to minimize the likelihood that it would be substantively consolidated with PMI, and thus have its assets subject to claims by PMI's creditors, if PMI files for bankruptcy. As an additional example, Prosper has an agreement with a backup servicer to provide continuity for investors in the event that Prosper could not continue to fulfill its obligations. Where a Lending Platform has implemented additional measures to protect investor's interests such as those outlined above, the Proposed Statement should include an additional exemption from compliance with the proposed Net Worth and Unsound Financial Condition requirements.

Requirements for Lending Platforms—Prohibition against Disclaimers regarding Accuracy of Information (Section III.I)

The Proposed Statement prohibits Lending Platforms from disclaiming the accuracy of information provided to Investors. Because the impact of such a restriction is not limited to the Lending Platform's rights under state securities laws, we respectfully submit that such a prohibition should not apply to Lending Platforms subject to SEC registration.

Investors enjoy substantial protection under the federal securities law by virtue of Prosper's SEC registration. As a result of the registration of the Notes, any communications made by Prosper in connection with the servicing of the Notes is subject to liability under the antifraud provisions of the Securities Act, including Section 11, Section 12(a)(2) and Section 17 thereof.

Further, we expect that the antifraud provisions of the Securities Exchange Act of 1934, as amended, including Section 10(b) and Rule 10b5-1 thereunder, will apply in full measure to any statements Prosper makes in connection with the sale of Notes. Issuers of federally registered securities may limit exposure under these securities laws by including in their registration statements clear and accurate disclosures regarding the risks of the investment, and where appropriate, disclaimers related to risks that the Lending Platform believes are inherent to the security being offered. The prohibition set forth in the Proposed Statement would restrict Prosper's ability to include such customary disclosures.

Requirements for Lending Platforms—Regulatory Compliance (Section III.C.)

The Proposed Statement would require that Lending Platforms comply with FINRA registration requirements. To do so may render Prosper an "Investment Advisor," and potentially a "Broker-Dealer," under federal securities laws. The additional costs and burdens imposed by complying with each designation may be prohibitive to the business of Lending Platforms, who may not otherwise be required to comply with these requirements under federal law.

Requirements for Lending Platforms—Educational Materials (Section III.N.)

The Proposed Statement would require Lending Platforms to provide, in addition to the prospectus, educational materials for both investors and borrowers, which would be submitted to a state administrator and reviewed prior to dissemination. Prosper provides extensive disclosure for investors in its registration statement and prospectus regarding the nature of the product and associated risks. This disclosure has been vetted by the SEC over the course of more than a decade. All material information for investors is required to be disclosed in this registration statement and accompanying prospectus. Creating additional educational materials for investors would be a substantial burden without a corresponding benefit for investors given Prosper's extensive SEC disclosure. Creating educational materials for borrowers would be an even greater burden. In addition to SEC registration, Prosper currently registers its Notes on a state by state basis, pursuant to which the Notes are available to investors in 30 states and in the District of Columbia.

4. **The Proposed Statement would drastically reduce the flow of Borrowers to Lending Platforms, thereby limiting their lending options.**

Requirements for Lending Platforms—Verification of Material Information (Section III.I.)

The Proposed Statement requires Lending Platforms to verify material information regarding borrowers including, but not limited to, employment, stated income, other debt incurred, and debt-to-net income ratios.

While a significant amount of the borrower information that Prosper provides to investors is obtained directly from credit reporting bureaus or verified during the application and underwriting process, for certain self-reported information such as income and occupation, Prosper takes a more customized approach to verification. Utilizing a proprietary algorithm, Prosper identifies borrowers whose self-reported income is highly determinative of their risk rating for this enhanced verification. This proprietary algorithm, which uses historical credit and loan performance data from the platform, allows Prosper to take a more nuanced approach to verification, balancing the increased comfort that such verification can provide to the underwriting process with the additional burden such verification place on the Lending Platform and borrowers. To ensure full transparency to investors, Prosper's prospectus clearly discloses

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that such self-reported information may not be verified and discloses the percentage of borrower loans subject to such additional verification.

Requirements for Lending Platforms—Changes in Borrower's Employment, Income, Debt and Credit Profile (Sections III.I. and III.M.)

Under the Proposed Statement, at least once a year, Marketplace Lenders would be required to send investors any changes to the borrower's employment, income, and debt (Section III.I) and updated credit information (including changes in credit scores) (Section III.M) for their corresponding borrowers if there have been material changes to the borrower's information since the original loan listing. This ongoing reporting obligation would make loans issued through Lending Platforms unique compared to personal loans issued through traditional lenders, mortgages, credit cards, and other debt instruments which do not require ongoing reporting obligations to originators and issuers. The requirement would require significant changes to Prosper's current practices, including amending agreements with credit rating agencies, and substantial changes to policy documents and terms of use, as well as operational challenges of essentially conducting re-verification procedures for each borrower annually.

Additionally, this requirement would provide limited value where the Lending Platform has not established a secondary market, as the investor holds the Notes through maturity and does not have the ability to make additional investments in the same loan or borrower once the loan has originated. Further, we note that such ongoing information requirements are not in line with industry practice regarding fixed rate, fixed term installment loans.

Public Offerings of Peer-to-Peer Lending Debt Securities—Online Disclosure (Section IV.C.2)

The Proposed Statement would require the Lending Platform to provide online disclosure regarding the borrower's occupation and employment for the past five years, and information about the borrower's income and monthly expenses. We note that these proposed disclosure obligations would require Lending Platforms to obtain and verify significantly more information from borrowers than the information required by lenders and other marketplace lending platforms that are not subject to the Proposed Statement, thereby placing Lending Platforms at a competitive disadvantage. Such a requirement could also limit the availability of Lending Platforms as a source of funds for borrowers by potentially disqualifying individuals with gaps in their employment history. Similarly, an obligation to provide information about a borrower's monthly expenses would be unique for the industry and result in a competitive disadvantage for Lending Platforms subject to such a requirement.

5. **The Proposed Statement would drastically reduce the viability of peer-to-peer lending as an investment option for investors without a commensurate benefit in investment risk reduction.**

Public Offerings of Peer-to-Peer Lending Debt Securities—Subscription Agreements (Section IV.D)

The Proposed Statement would require subscription agreements with each investor and would require Prosper to obtain significantly more information about investors (e.g., their investment objectives, experience, income, net worth, financial situation, other investments, etc.) and make an independent determination that the purchase of Notes are suitable and appropriate based on the information gathered. This requirement would increase the burden on investors by requiring them to provide substantially more information than they do for other forms of investments, including stocks, bonds, and alternative investments with arguably more volatility. More significantly, this requirement shifts the financial suitability burden from state regulators to Marketplace Lenders to make subjective determinations of investor suitability, creating substantial risk of additional liability. Prosper currently discloses investor suitability requirements to investors, if applicable to the investor's state of residence, and requires them to represent that they satisfy such requirements.

Public Offerings of Peer-to-Peer Lending Debt Securities—Investor Qualifications (Section IV.F)

The Proposed Statement would require that total sales to any investor on the Lending Platform could not exceed (a) the greater of $2,200 or 5% of the lesser of the investor's annual income or net worth if either is less than $110,000 or (b) 10% of the lesser of the investor's annual income or net worth, not to exceed an amount sold of $110,000, if both are equal to or more than $110,000. This requirement again creates a significantly increased verification burden. For states with financial suitability requirements, Prosper's existing practice is to ask investors in those states to attest that they meet their state suitability requirements but Prosper does not verify annual income or net worth.

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Prosper has gone to great lengths and incurred significant expense as an SEC-regulated company to provide fulsome disclosure and other protections for investors. While most lenders in the space are not subject to SEC regulation, Prosper has spent more than a decade working with the SEC to shape its disclosures, business structure and practices. Accordingly, the Proposed Statement should not be applicable to Lending Platforms that are SEC reporting companies.

We respectfully urge you to amend the Proposed Statement to exclude SEC reporting companies, or alternatively, to revise the Proposed Statement as discussed above. We would welcome the opportunity to discuss our comments and observations with you at your convenience. Thank you for your consideration.

Sincerely,

Edward R. Buell III
General Counsel
Prosper Marketplace, Inc.

cc: Andrea Seidt, Section Chair
Jeff Soderstedt, Project Group Chair