

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

-----X  
In the Matter of

PROSPECT LENDING, LLC IN LIEU OF TRUE NAME  
PROSPECT MORTGAGE, LLC

**CONSENT ORDER**

Limited Liability Companies  
-----X

This Consent Order (“Order”) is made and entered into by and between Prospect Lending, LLC in lieu of the true name Prospect Mortgage, LLC (“Prospect”) and the New York State Department of Financial Services (the “Department”) (collectively “the Parties”), evidencing an agreement between the Parties to address concerns raised by the Department during the processing of Prospect’s mortgage banker Change of Control application and processing of applications for Mortgage Loan Originators (“MLO”) sponsored by Prospect, as well as concerns identified during the Department’s May 2010 examination of Prospect, subject to the terms and conditions set forth herein.

**I.**

**RECITALS**

WHEREAS, Prospect, headquartered at 15301 Ventura Boulevard, Suite D300, Sherman Oaks, California 91403, was originally licensed by the Department as a mortgage banker under the name “Metrocities Mortgage, LLC” (“Metrocities”) in July 2002;

WHEREAS, in March 2006, the Department raised concerns relating to Prospect’s “Series LLC” limited liability operating structure. In various written and verbal communications between Prospect and the Department, Prospect was notified that use of the “Series LLC” structure in New York required each “Series” to obtain a separate license or registration to conduct New York activities. In addition, Prospect was prohibited from utilizing additional “assumed names” (dba) in New York or the “Series” structure without obtaining the proper license or registration.

WHEREAS, Prospect Holding Company, LLC (“Holdings”) submitted a mortgage banker change of control application (the “Application”) to the Department in May 2007 seeking approval to acquire Metrocities pursuant to Article XII-D of the New York Banking Law (“Banking Law”). Subsequently,

Holdings consummated the acquisition of Metrocities without the approval of the Department in violation of Article 12-D, Section 594-b.1 of the New York Banking Law. Thereafter, in February 2009, Metrocities' name was changed to "Prospect Mortgage, LLC", and in September 2009, the Department granted Prospect approval to use the fictitious name: "Prospect Lending, LLC";

WHEREAS, during the processing of the Change of Control application, a subsequent examination of Prospect in 2010, and the processing of MLO applicants sponsored by Prospect, the Department expressed concerns regarding the operational control environment and management oversight of Prospect;

WHEREAS, the Department's 2010 examination of Prospect identified violations of Article 12-D and 12-E of the Banking Law, Part 38 of the General Regulations of the Banking Board, Parts 410 and 420 of the Superintendent's Regulations and Article 8, Section 254 of New York's Real Property Law. Specifically, Prospect was responsible for the following activities: (1) in some instances, collecting loan discount fees to reduce the initial rate, but failing to give borrowers the discounted interest rate associated with such fees; (2) facilitating mortgage loan origination activities through unlicensed mortgage loan originators; (3) conducting business with unlicensed entities, and through unauthorized websites and unlicensed branch locations; (4) conducting business with 29 entities that engaged in the solicitation of New York loans pursuant to "Affiliated Business Arrangements" under the Series LLC structure, in violation of Article XII-D of the New York Banking Law; (5) failing to disclose loan origination information; (6) failing to issue commitment agreements to certain borrowers, and (7) failing to maintain books and records in compliance with banking laws and regulations;

WHEREAS, during the processing of MLO applications for applicants sponsored by Prospect, the Department notified Prospect of concerns that their MLO applicants were not directly employed by Prospect and were engaging in loan origination business through series limited liability companies;

WHEREAS, during the 2010 Fair Lending examination, which covered 2008 through 2009, the Department found that Prospect's compliance systems needed improvement. Specifically, the Department found the following violations: (1) violation of 3-NYCRR-38.7(a)(1) for misrepresenting loan terms with respect to charging discount points that had no benefit to the borrower; (2) violation of Superintendent's Regulations Part 408.2 and Section 296-a (4)(a) of the Executive Law, for failing to clearly state the specific reason for rejecting an application, and (3) violation of the Superintendent's Regulations Part 410.7(f) for failure

to comply with record retention requirements and not including rate sheets in the list of documents to be retained. Additionally, the Department found that Prospect's fair lending plan did not include third party providers and periodic reviews as required by the Department's Industry Letter of February 18, 2000.

WHEREAS, in February 2011, the Department notified Prospect and the other regulated entities that effective January 2, 2011, individuals who were not listed as "approved" or "approved-conditional" (collectively "licensed") could not engage in mortgage origination activities;

WHEREAS, in March 2011 Prospect provided the Department with information relating to the W-2 status of sponsored MLO applicants. Additionally, in August 2011, Prospect notified the Department that Prospect improperly allowed unlicensed MLO applicants to engage in mortgage loan solicitation activities after receipt of the Department's letter notifying regulated entities that unlicensed MLOs could not originate loans on 1-4 family property located in New York;

WHEREAS, on July 8, 2011, the United States Department of Housing and Urban Development ("HUD") entered into a Settlement Agreement (the "Agreement") with Prospect for violations of HUD/FHA requirements and the Real Estate Settlement Procedures Act ("RESPA"). Specifically, the Agreement alleges that a series limited liability company that originates and funds FHA insured mortgages in the manner conducted by Prospect did not comply with HUD/FHA's guidelines for the operation of branch offices. Additionally, the Agreement alleges that certain "affiliated business arrangements" or series of limited liability companies operated by Prospect did not comply with RESPA requirements governing affiliated business arrangements, including the requirement for sufficient initial capital and separate dedicated employees. Further, Prospect agreed to, amongst other things, pay HUD \$3.1 million.

NOW, THEREFORE, as a result of the foregoing concerns, the Department requires Prospect to agree to the following conditions in order to resolve the Department's concerns with Prospect's prior conduct:

## II

### TERMS AND CONDITIONS

1. Compliance with Laws and Regulations. Prospect shall adopt policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, and supervisory requirements relating to its mortgage business, including, but not limited to, the following federal and state laws

and regulations:

- a. Truth-In-Lending Act (“TILA”), and its implementing regulation: Regulation Z of the Board;
- b. Real Estate Settlement Procedures Act (“RESPA”), and its implementing regulation: Regulation X;
- c. Home Mortgage Disclosure Act and its implementing regulation: Regulation C;
- d. Fair Housing Act (42 U.S.C. 3005);
- e. Equal Credit Opportunity Act (“ECOA”) (15 U.S.C. 1691);
- f. Consumer Credit Protection Act (15 U.S.C. 1601);
- g. Sections 254-b and 254-d of New York Real Property Law
- h. Section 296-a of the New York State Human Rights Law (N.Y. Executive Law section 296-a);
- i. Article 12-D of the New York Banking Law;
- j. Article 12-E of the New York Banking Law;
- k. Part 38 of the General Regulations of the Banking Board; and
- l. Part 410 of the Superintendent’s Regulations.

Prospect shall continue to submit such policies and procedures to the Superintendent in accordance with the terms set out below. Where no time frame is provided, or where the Superintendent requests supplemental information to demonstrate the Parties’ compliance with applicable laws, regulations and supervisory requirements, Prospect shall provide such information within a reasonable time upon request.

2. Compliance Program. Within 120 days from the effective date of the Order, Prospect shall submit to the Department a revised formal written compliance program designed to ensure compliance by Prospect with all applicable federal and state laws, regulations and supervisory guidance and with Prospect’s policies and procedures with respect thereto. The program shall, at a minimum:

- a. Designate a compliance officer responsible for day-to-day oversight of its compliance program. The compliance officer must be independent of Prospect’s loan origination and marketing functions;

- b. Establish a compliance training program for employees, board of directors, and independent contractors, if any, for Prospect;
- c. Provide for reviews of third-party service providers and vendor management;
- d. Establish an automated processes utilized to manage such providers' overall compliance function;
- e. Provide for periodic review of policies and procedures to ensure that such policies and procedures reflect current laws, regulations and regulatory guidance;
- f. Provide for oversight of the compliance function by Management and periodic reports by the chief compliance officer to the Board of Director's Compliance Oversight Committee and/or the Board of Directors with respect to the efficacy of the compliance program;
- g. Provide for periodic reviews of Prospect's business functions governing the licensing and approval of mortgage loan originators, branch locations, and assumed names;
- h. Establish an enhanced training program by doing the following: a) maintain a log of all training attendees; b) ensure that all training attendees certify that they understand and will uphold the state and federal fair lending laws and regulations; c) ensure that compliance staff receives appropriate compliance training to carry out their responsibilities in an effective manner;
- i. Enhance the second level loan review process by ensuring the reviews are performed by an employee holding a higher title than the initial reviewer.
- j. Ensure that Prospect's third-party providers understand and acknowledge their responsibility to comply with New York Executive Law §296-a by requiring those providers to certify their understanding and acknowledgement in a written agreement, and
- k. Develop a written exception policy and an exception log.

3. Authorized Names and Locations. Prospect shall take all necessary steps to ensure that any names or locations utilized by Prospect, including websites, in soliciting or advertising mortgage loan products on 1-4 family residential property located in New York, are properly licensed or authorized by the Department for use in Prospect's New York operations. Additionally, Prospect shall take steps to ensure that all websites used in conducting its New York operations are owned by Prospect.

4. Series Limited Liability. Prospect confirms that it no longer operates affiliated businesses through Series Limited Liability structure, and will not do so in the future in New York unless and until it has taken steps to comply with the licensing requirements of Article 12-D of the Banking Law.

5. Mortgage Loan Originator. Prospect shall develop and implement comprehensive policies and procedures governing the supervision of mortgage loan originators. Such policies and procedures should, at a minimum, address: 1) prohibited conduct outlined in Part 420 of the Superintendent's Regulations; 2) the use of websites owned and controlled by mortgage loan originators; 3) the use of social media networking sites and 4) a description of the corrective action to be taken to address noncompliance with Prospect's established policies and procedures.

6. Loan Pricing Records. Prospect shall take appropriate steps to ensure that, for each approved loan, all required loan pricing records be maintained in compliance with the record retention requirements of Article 12-D of the Banking Law. A complete loan pricing file must include, but is not limited to: 1) the initial interest rate offered and discount points charged to each borrower; 2) any special or incentive pricing program offered during the period, and 3) rate sheets and pricing adjustments. All of the foregoing records must be maintained as part of the borrowers loan file for Required Mortgage Disclosures. Prospect shall maintain comprehensive records documenting Prospect's compliance with required mortgage disclosures, including, but not limited to, TILA, RESPA, ECOA and Part 38 of the General Regulations of the Banking Board.

7. Books and Records. In addition to the requirements in paragraph 6, Prospect shall maintain books and records in a manner that will enable the Superintendent to determine whether Prospect is complying with all applicable federal and state laws, regulations, supervisory requirements and guidance letters.

8. Heightened Supervisions. For a period of three years beginning on the effective date of this Order, Prospect shall submit to semi-annual comprehensive examinations by the Department at the discretion of the Department.

### III.

#### RELIEF AND PAYMENTS

1. Loan Discount and Escrow Waiver Fees

(a) Refund of unearned loan discount fees. Prospect agreed to and has facilitated an independent review of loans closed during the period January 1, 2008 to August 31, 2011 for borrowers that were charged a loan discount fee in order to determine whether such borrowers received a bona-fide discounted rate.

(b) Restitution. Prospect Mortgage agreed to and has refunded the borrowers identified in subparagraph (a) above, which total 270 loans. The aggregate amount of refunds paid to these borrowers by Prospect was **\$427, 154.50**.

2. Penalty. Prospect agrees to pay a penalty of **three million dollars (\$3,000,000.00)** to address the violations of laws and regulations previously cited in this Order.

3. Borrower Relief Reports. Prospect agreed to and has provided the Department with reports identifying borrowers entitled to relief under the provisions of Section III of the Order.

4. Compliance Progress Reports: Prospect also agrees to provide reports on a quarterly basis during the three-year period covered by this Order to assist the Department in evaluating compliance with the provisions of this Order. Such reports shall, at a minimum, address measures taken or proposed, the timeline for such action or the proposed timeline for such action to be undertaken, compliance review or operational audits conducted to evaluate the effectiveness of such corrective action and an indication as to whether senior management has reviewed and/or approved the corrective measures.

#### IV.

#### MISCELLANEOUS TERMS AND CONDITIONS

1. The Parties acknowledge that the failure of Prospect to comply with any of the terms and conditions of this Order may result in the Department taking action to terminate Prospect's license to engage in the business of a mortgage banker under Article 12-D of the Banking Law.
2. The Parties acknowledge that entering into this Order shall not bar, estop, or otherwise prevent the Superintendent, or any state, federal or local agency or department or any prosecutorial authority from taking any other action affecting Prospect, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns.
3. Notwithstanding the provisions of the immediately preceding paragraph 2 above, no further action will be taken by the Department against Prospect for the conduct set forth in this Consent Order, provided Prospect complies with the terms and conditions of this Consent Order, however, the Department may undertake enforcement action against Prospect for transactions or conduct that Prospect did not disclose to the Department in written materials it provided to the Department during the Department's review of the 2006 Series LLC limited liability structure, the 2007 mortgage banker Change of Control application, the 2010 applications for MLOs sponsored by Prospect and the 2010 examinations conducted by the Department, including the Fair Lending examination.
4. This Order may not be altered, modified or changed unless in writing signed by the Superintendent or his designee.
5. This Order shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or his designee.
6. The effective date of this Order is the date on which the Order is executed by the Chief Executive Officer, Ronald L. Bergum.



7. All written communications to the Department regarding this Order should be sent as follows.

Attention:

Gaurav Vasisht  
Executive Deputy Superintendent of Banks  
New York State Department of Financial Services  
One State Street,  
New York, New York 10004

8. All written communications to Prospect regarding this Order should be sent as follows.

Attention:

Ronald L. Bergum  
Chief Executive Officer  
Prospect Lending, LLC in lieu of Prospect Mortgage, LLC  
15301 Ventura Blvd. Suite D300  
Sherman Oaks, CA 91403

9. This Consent Order is not confidential; therefore, it shall be made available to the public.

WHEREFORE, the Parties hereto have caused this Order to be executed.

By: \_\_\_\_\_

Ron L. Bergum  
Chief Executive Officer  
Prospect Mortgage, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Gaurav Vasisht  
Executive Deputy Superintendent of Banks  
New York Department of Financial Services

Dated: \_\_\_\_\_