

1 Issuer provided to the investor a nontransferable password allowing access to the Issuer's Offering
2 web page. Profounder informed the Issuers that passwords should be sent by Issuers only to persons
3 with whom the Issuer had a substantial, preexisting personal or business relationship. ProFounder
4 represented to Issuers that such persons might include an Issuer's friends, family, customers and
5 community members, depending on the circumstances of the individual Issuer. By having the Issuer
6 check a box beside a statement that read: "I confirm I have a substantial, pre-existing relationship
7 with the invitee," ProFounder's website required that every Issuer confirm that it had a substantial,
8 pre-existing relationship with each potential investor before such investor could be invited to view
9 the Offering. ProFounder also required all potential investors who received an invitation to confirm
10 the existence of the required relationship before viewing the Offering. Prior to viewing the Offering,
11 potential investors were required to check a box next to a statement that was pre-populated with the
12 name of the Issuer and that read: "I confirm I have a substantial, pre-existing relationship with [Name
13 of Issuer]." ProFounder claimed that restricting offers and sales of securities to persons with whom
14 the Issuer had a substantial, pre-existing relationship made the investment offerings exempt from the
15 need for qualification or registration under state and federal securities laws. However, other than
16 requiring the checking of the boxes by the issuer and potential investor to view the Offerings,
17 Profounder did not attempt to verify independently that the substantial pre-existing relationships in
18 fact existed or that the issuers were complying with the terms of any exemptions to qualification or
19 registration specified by state and federal securities laws. Profounder also contended it did not
20 provide legal advice as to compliance with securities laws to issuers and that Profounder was not
21 legally responsible for any violations of securities laws by issuers using its services or website.

22 3. ProFounder also provided to Issuers standardized investment contract templates that
23 Issuers could customize and use in their Offering. ProFounder provided templates for both revenue
24 sharing investment agreements and equity investment agreements. Under the latter, investors would
25 purchase restricted, private company stock. Under the former, investors would purchase a non equity
26 interest in the business, which interest entitled the investor to a pre-agreed percentage of the gross
27 revenues generated by the business over a specified period. Revenue sharing investors would have
28 no ownership or control of the Issuer's business and would receive no return if revenues did not

1 materialize or the revenues earned were insufficient to fully repay the investment during the term of
2 the contract. Language in the standardized investment contract templates contained arbitration
3 clauses that placed limits on or barred investors' ability to pursue legal claims in court against the
4 Issuer or ProFounder for any losses.

5 4. Some of the services offered on ProFounder's website changed after it began operations.
6 Though some services were discontinued, at one time the website indicated the services provided by
7 ProFounder included: 1) collecting money from investors on behalf of Issuers; 2) obtaining "e-
8 signatures" on the investment contracts from investors and Issuers; 3) distributing investor money to
9 Issuers; and 4) electronically transferring any funds from Issuers to investors that were due under the
10 terms of the parties' investment contract.

11 5. The investment contracts offered and sold by Issuers on ProFounder's website constitute
12 securities. ProFounder has neither applied for nor secured from the California Corporations
13 Commissioner a license to operate in the capacity of a securities broker-dealer in the State of
14 California.

15 Based upon the foregoing findings, the California Corporations Commissioner is of the
16 opinion that ProFounder, in operating the website in the manner described above, has induced the
17 sale of securities in this state without having first applied for and secured a license authorizing it to
18 act in the capacity of a securities broker-dealer, in violation of section 25210 of the Corporate
19 Securities Law of 1968. Pursuant to Corporations Code section 25532, ProFounder is hereby ordered
20 and ProFounder agrees to desist and refrain from effecting any transaction in, or attempting to induce
21 the purchase or sale of, any security in this state, unless and until it has applied for and secured from
22 the Commissioner a certificate authorizing it to act in that capacity or unless exempt. ProFounder
23 also specifically agrees to desist and refrain from operating any website that induces securities to be
24 sold over the Internet without first obtaining a certificate authorizing it to act as a securities broker-
25 dealer in the State of California, unless exempt. This Order is necessary, in the public interest, for the
26 protection of investors and is consistent with the purposes, policies, and provisions of the Corporate
27 Securities Law of 1968.

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1 ProFounder consents to entry of this Order by the Department of Corporations as settlement
2 of the issues contained in this Order.

3 This Order is entered into solely for the purpose of resolving the investigation of the activities
4 and services described herein and is not intended to be used for any other purpose. This Consent
5 Order concludes the investigation by the California Department of Corporations and any other action
6 that the California Department of Corporations could commence under applicable California law on
7 behalf of California as it relates to ProFounder's activities and services, with regard to violations of
8 Corporations Code section 25210 occurring prior to the effective date of this order. The California
9 Department of Corporations shall refrain from initiating any action against, and will not seek
10 monetary or other penalties from ProFounder for any violations of Corporations Code section 25210
11 occurring before the effective date of this order.

12 For any person or entity not a party to this Consent Order, this Consent Order does not create
13 any private rights or remedies against ProFounder, create liability of ProFounder, or limit defenses of
14 ProFounder to any claims.

15 In consideration of this Consent Order, ProFounder waives its right to a hearing on this matter
16 and to judicial review of this matter pursuant to California Code of Civil Procedure Section 1094.5.
17 This Consent Order is a public document and will be posted on the website of the Department of
18 Corporations.

19 Dated: August 24, 2011

PROFOUNDER FINANCIAL, INC.

21 By _____
JESSICA JACKLEY
22 Chief Executive Officer

23 Dated: August 31, 2011
24 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

25 By _____
26 ALAN S. WEINGER
27 Deputy Commissioner
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