

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10630 / April 19, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19148

In the Matter of

PROSPER FUNDING LLC

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Prosper Funding LLC (“Prosper” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. Prosper is a marketplace lender that enables borrowers to obtain unsecured consumer loans and investors to purchase securities that include notes linked to the performance of the consumer loans and other related rights (“Prosper securities”). The proceeds of the sales of the Prosper securities facilitate the funding of the consumer loans. Prosper offers the Prosper securities to retail and other investors. Prosper reports each investor’s annualized net returns (“ANR”), along with additional information about the consumer loans and their performance, to investors through individual account pages on Prosper’s website.

2. From approximately July 2015 until May 2017 (the “relevant period”), Prosper excluded Prosper securities linked to certain charged-off consumer loans from its calculation of ANR. Prosper failed to identify and correct the error despite its employees’ knowledge that Prosper no longer understood how the code underlying the ANR calculation operated, and despite investor complaints about possible errors in their reported ANR.

3. As a result, Prosper miscalculated and materially overstated the ANR it reported to a total of more than 30,000 investors during the relevant period. It made these misstatements on investors’ online account pages and in emails soliciting additional investments in Prosper securities. Many investors made additional investments in Prosper securities based in part on the overstated ANR.

Respondent

4. **Prosper Funding LLC (“Prosper”)**, is a privately-held California limited liability company based in San Francisco, California. Prosper is a marketplace lender that, with its parent company, offers the Prosper securities through Prosper’s website.

Facts

5. Prosper arranges consumer loans through its website and sells Prosper securities linked to the performance of those consumer loans to investors. Prosper earns revenues by collecting transaction fees linked to originations and servicing fees on the consumer loans.

6. During the relevant period, when investors opened accounts with Prosper, Prosper gave them access to individual account pages on Prosper’s website through which they could invest in the Prosper securities. The account pages provided information on the consumer loans and the performance of each investor’s Prosper securities.

7. Prosper calculated the ANR for each investor’s portfolio of Prosper securities through an automated process in its computer code. It reported ANR results prominently on each investor’s online account page.

8. In 2009, prior to the relevant period, Prosper’s parent company began offering investors access to a secondary market for these securities. At that time, the method for calculating ANR was changed to exclude securities sold in the secondary market. Prosper’s

parent company disclosed this fact to investors. The change was implemented by modifying the code to exclude from the ANR calculation all securities that changed ownership.

9. In late 2014, after an engineering review, Prosper determined that it should rewrite its older “legacy” code. In the review, Prosper also learned that its current employees did not fully understand the operation of the older, legacy code. Prosper prioritized rewriting the legacy code for the borrower-facing platform, which did not include the code for the ANR calculation. Prosper did not take any steps to monitor operation of the ANR code to ensure it was correctly calculating ANR.

10. In July 2015, Prosper implemented a “debt sale program,” through which eligible non-performing, charged-off consumer loans linked to Prosper securities were sold to third-party debt purchasers. The debt sale program for consumer loans was unrelated to any secondary market for Prosper securities. However, because Prosper’s system treated the securities linked to these charged-off loans as having changed ownership for servicing purposes, Prosper’s code incorrectly excluded their performance history when calculating the investors’ ANR. When Prosper began the debt sale program, Prosper did not identify this impact on the ANR calculation and did not disclose any change to its calculation methodology. As a result, for investors whose securities were linked to loans sold through the debt sale program, Prosper reported an ANR that excluded the impact of the worst performing securities that they had previously held.

11. Beginning in August 2015, certain affected investors questioned Prosper about the accuracy of ANR calculations they received. Prosper’s customer service department handled these complaints and confirmed reported figures to investors. The customer service employees did not elevate any of these investor complaints to Prosper’s product or engineering departments.

12. In late 2015, Prosper undertook a “code inventory” of the code for calculating ANR for possible use in a different project. Through this process, Prosper again identified the fact that its current employees lacked understanding of the code’s operation. However, the code inventory was a high level review, and Prosper still did not identify the error in the ANR calculation.

13. Because of Prosper’s error in the ANR calculation, Prosper told more than 30,000 of its investors -- a majority of the total number of its investors -- that their Prosper investments were performing better than they actually were. Prosper reported to some of these investors that their portfolios had earned up to double the returns they actually had earned.

14. Prosper also solicited new investments in Prosper securities based on the miscalculated ANR. Specifically, it sent emails to tens of thousands of investors highlighting their erroneous ANR, recommending that they “[a]dd funds and build on [their] solid returns,” and offering a link that allowed them to purchase additional securities from Prosper.

15. Tens of thousands of the affected investors made additional investments in Prosper securities. For many of these investors, their decisions were based in part on the inaccurate ANR Prosper reported on their online account pages and/or in the solicitations Prosper emailed to investors. Prosper received fees as a result of these additional investments

because it collected transaction fees linked to originations and servicing fees on the consumer loans that Prosper funded through sales of the Prosper securities.

16. Prosper did not identify the error for almost two years, and discovered it only after receiving a complaint from a large institutional investor in April 2017.

17. On May 3, 2017, Prosper notified investors that it had miscalculated and misstated their ANR. Prosper provided a current, correct calculation of ANR to investors at that time.

Prosper's Remedial Efforts

18. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Prosper and cooperation afforded to the Commission staff.

19. Since discovery of the error, Prosper has instituted a number of controls designed to prevent and detect similar errors in the future, including management supervision of the ANR calculation and data owners, quarterly reviews of any changes that could have an impact on the data used in the ANR calculation, and semi-annual testing of the ANR calculation.

Violations

20. As a result of the conduct described above, Prosper violated Section 17(a)(2) of the Securities Act, which prohibits, in the offer or sale of securities, obtaining money or property by means of any material misstatement or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.¹

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Prosper cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act.

B. Prosper shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$3,000,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

¹ No finding of scienter is required to establish a violation of Section 17(a)(2); negligence is sufficient. *See Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

Payment must be made in one of the following ways:

- 1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- 2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- 3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Prosper as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Laura M. Metcalfe, Assistant Director, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado, 80294.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action"

means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Acting Secretary