

GRUBHUB INC.

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 07/18/14

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Fiscal Year 12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

GRUBHUB INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

46-2908664
(I.R.S. Employer
Identification No.)

111 W. Washington Street, Suite 2100
Chicago, IL
(Address of Principal Executive Offices)

60602
(Zip Code)

GrubHub Inc. 2013 Omnibus Incentive Plan
(Full title of the plans)

Margo Drucker, Esq.
Senior Vice President, Secretary and General Counsel
111 W. Washington Street, Suite 2100
Chicago, IL 60602
(877) 585-7878

(Name and address of agent for service and telephone number, including area code, of agent for service)

Copies to:

Joshua N. Korff, Esq.
Michael Kim, Esq.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Common Stock, par value \$0.0001 per share	10,351,283 (3)	\$33.04	\$342,006,391	\$44,051
Total	10,351,283 shares		\$342,006,391	\$44,051

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of common stock which become issuable because of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of common stock.
- (2) Estimated in accordance with Rule 457(c) and Rule 457(h) under the Securities Act, solely for the purpose of calculating the registration fee, on the basis of the average of the high and low sale prices of the registrant’s common stock as reported on the New York Stock Exchange on July 15, 2014.
- (3) Represents shares of common stock issuable pursuant to the GrubHub Inc. 2013 Omnibus Incentive Plan being registered hereon.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in Part I will be delivered in accordance with Form S-8 and Rule 428(b) under the Securities Act. Such documents are not required to be, and will not be, filed with the Securities and Exchange Commission (the “Commission”), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The written statement required by Item 2 of Part I is included in documents delivered to participants in the plans covered by this Registration Statement pursuant to Rule 428(b) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by GrubHub Inc. (the “Company”) with the Commission, are hereby incorporated by reference into this Registration Statement:

- (a) The Company’s prospectus filed with the Commission on April 7, 2014 pursuant to Rule 424(b) of the Securities Act, which prospectus is a part of the Company’s Registration Statement on Form S-1, as amended (Registration No. 333-194219);
- (b) The description of the Company’s common stock contained in the Company’s Registration Statement on Form 8-A (File No. 001-36389) filed with the Commission on April 1, 2014, pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including any amendment or report filed for the purpose of updating such description;
- (c) The Company’s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2014, filed with the Commission on May 15, 2014; and
- (d) The Company’s Current Report on Form 8-K, filed with the Commission on May 8, 2014.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than reports (or portions thereof) on Form 8-K “furnished” pursuant to Item 2.02 or Item 7.01 of Form 8-K, including any exhibits included with such information, unless otherwise indicated therein) after the date of this Registration Statement, but prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Company is incorporated under the laws of the State of Delaware. Reference is made to Section 102(b)(7) of the Delaware General Corporation Law (“DGCL”), which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director’s fiduciary duty, except (1) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (4) for any transaction from which a director derived an improper personal benefit. The Company’s amended and restated certificate of incorporation provides for this limitation of liability.

Reference is also made to Section 145 of the DGCL, which provides that a corporation may indemnify any person, including an officer or director, who is, or is threatened to be made, party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of such corporation, by reason of the fact that such person was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any officer or director in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses that such officer or director actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145.

The Company's amended and restated by-laws provide that the Company must indemnify its directors and officers to the fullest extent authorized by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified under this section or otherwise.

The Company has entered into indemnification agreements with each of its directors and officers that are broader than the specific indemnification provisions contained in the DGCL (the "Indemnification Agreements"). The Indemnification Agreements require the Company, among other things, to indemnify its directors and officers against liabilities that may arise by reason of their status or service. The Indemnification Agreements also require the Company to advance all expenses incurred by the directors and officers in investigating or defending any such action, suit or proceeding.

The Company maintains insurance to protect it and its directors and officers against any expense, liability or loss, whether or not the Company would have the power to indemnify such persons against such expense, liability or loss under applicable law.

The underwriting agreement, dated April 3, 2014, by and among Citigroup Global Markets Inc., Morgan Stanley & Co. LLC, Allen & Company LLC, BMO Capital Markets Corp., Canaccord Genuity Inc., Raymond James & Associates, Inc. and William Blair & Company, L.L.C., as underwriters, certain selling stockholders listed on Schedule II of the underwriting agreement, and the Company, provides for indemnification by the underwriters of the Company and its officers and directors for certain liabilities arising under the Securities Act, or otherwise.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquires under any statute, provision of the Company's amended and restated certificate of incorporation, the Company's restated bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the attached Exhibit Index, which is incorporated by reference herein.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Chicago, Illinois on July 18, 2014.

GRUBHUB INC.

By: /s/ Matthew Maloney

Name: Matthew Maloney

Title: Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Matthew Maloney, Adam DeWitt and Margo Drucker, and each of them individually, with full power of substitution and resubstitution, his or her true and lawful attorney-in fact and agent, with full powers to each of them to sign for us, in our names and in the capacities indicated below, the Registration Statement on Form S-8 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and any and all amendments to said Registration Statement (including post-effective amendments), granting unto said attorneys, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as each of them might or could do in person, and hereby ratifying and confirming all that said attorneys, and each of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue of this power of attorney. This power of attorney may be executed in counterparts and all capacities to sign any and all amendments.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and indicated on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Matthew Maloney</u> Matthew Maloney	Chief Executive Officer and Director (Principal Executive Officer)	July 18, 2014
<u>/s/ Adam DeWitt</u> Adam DeWitt	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	July 18, 2014
<u>/s/ Jonathan Zabusky</u> Jonathan Zabusky	President and Director	July 18, 2014
<u>/s/ David Fisher</u> David Fisher	Director	July 18, 2014
<u>/s/ Brian McAndrews</u> Brian McAndrews	Director	July 18, 2014

<u>Name</u>	<u>Title</u>	<u>Date</u>
/s/ Lloyd Frink Lloyd Frink	Director	July 18, 2014
/s/ J. William Gurley J. William Gurley	Director	July 18, 2014
/s/ Justin Sadrian Justin Sadrian	Director	July 18, 2014
/s/ Benjamin Spero Benjamin Spero	Director	July 18, 2014

EXHIBIT INDEX

**Exhibit
Number****Description**

4.1	Amended and Restated Certificate of Incorporation of GrubHub Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1, as amended, filed with the Securities and Exchange Commission on March 14, 2014 (Registration No. 333-194219)).
4.2	Amended and Restated By-laws of GrubHub Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1, as amended, filed with the Securities and Exchange Commission on March 14, 2014 (Registration No. 333- 194219)).
4.3	Form of certificate of stock (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1, as amended, filed with the Securities and Exchange Commission on March 20, 2014 (File No. 333-194219)).
5.1*	Opinion of Kirkland & Ellis LLP.
23.1*	Consent of Crowe Horwath LLP, independent registered public accounting firm.
23.2*	Consent of Crowe Horwath LLP, independent registered public accounting firm.
23.3*	Consent of Kirkland & Ellis LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on the signature page of this Registration Statement and incorporated herein by reference).
99.1	GrubHub Inc. (f/k/a GrubHub Seamless Inc.) 2013 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form S-1, as amended, filed with the Securities and Exchange Commission on February 18, 2014 (File No. 333-194219)).

* Filed herewith

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, New York 10022-4611

www.kirkland.com

To Call Writer Directly:
212-446-4800

Facsimile:
(212) 446-4900

July 18, 2014

GrubHub Inc.
111 West Washington Street, #2100
Chicago, IL 60602

Ladies and Gentlemen:

We are acting as special counsel to GrubHub Inc., a Delaware corporation (the "Company"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"), with the Securities and Exchange Commission (the "Commission") covering the offering of up to 10,057,976 shares of common stock, par value \$0.0001 per share, of the Company (the "Plan Shares") pursuant to the GrubHub Inc. 2013 Omnibus Incentive Plan (the "Plan").

For purposes of this letter, we have examined such documents, records, certificates, resolutions and other instruments deemed necessary as a basis for this opinion, and we have assumed the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals of all documents submitted to us as copies.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, we advise you that the Plan Shares are duly authorized and when (i) the Registration Statement related to the Plan Shares becomes effective under the Act and (ii) the Plan Shares have been duly issued pursuant to and in accordance with the terms and conditions of the Plan and the Company's Amended and Restated Certificate of Incorporation and Amended and Restated By-laws, the Plan Shares will be validly issued, fully paid and non-assessable.

Our opinions expressed above are subject to the qualifications that we express no opinion as to the applicability of, compliance with, or effect of any laws except the General Corporation Law of the State of Delaware.

We have relied without independent investigation upon, among other things, an assurance from the Company that the number of shares which the Company is authorized to issue in its Amended and Restated Certificate of Incorporation exceeds the number of shares outstanding and the number of shares which the Company is obligated to issue (or had otherwise reserved for issuance) for any purposes other than issuances in connection with the Plan by at least the

Chicago Hong Kong London Los Angeles Munich San Francisco Washington, D.C.

number of Plan Shares which may be issued in connection with the Plan and we have assumed that such condition will remain true at all future times relevant to this opinion. We have assumed that the Company will cause certificates, if any, representing the Plan Shares issued in the future to be properly executed and delivered and will take all other actions appropriate for the issuances of such Plan Shares.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

We do not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or "Blue Sky" laws of the various states to the issuance and sale of the Plan Shares.

This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein. We assume no obligation to revise or supplement this opinion should the General Corporation Law of the State of Delaware be changed by legislative action, judicial decision or otherwise.

This opinion is furnished to you in connection with the filing of the Registration Statement, and is not to be used, circulated, quoted or otherwise relied upon for any other purposes.

Sincerely,

Kirkland & Ellis LLP

Kirkland & Ellis LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of GrubHub Inc. (F/K/A GrubHub Seamless Inc.) on Form S-8 of our report dated February 10, 2014 (except for the effect of the 1-for-2 reverse common and preferred stock split discussed in Note 13, as to which the date is April 2, 2014) on the consolidated financial statements of GrubHub Inc. (F/K/A GrubHub Seamless Inc.), appearing in Registration Statement of GrubHub Inc. (F/K/A GrubHub Seamless Inc.) on Form S-1 (File No. 333-194219).

/s/ Crowe Horwath LLP

Oak Brook, Illinois
July 17, 2014

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of GrubHub Inc. (F/K/A GrubHub Seamless Inc.) on Form S-8 of our report dated February 18, 2013 on the financial statements of GrubHub Holdings Inc. (F/K/A GrubHub, Inc.) appearing in Registration Statement of GrubHub Inc. (F/K/A GrubHub Seamless Inc.) on Form S-1 (File No. 333-194219).

/s/ Crowe Horwath LLP

Oak Brook, Illinois
July 17, 2014