

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11354 / January 17, 2025

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4556 / January 17, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22421

In the Matter of

GRUBMARKET, INC.

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 GrubMarket, Inc. (“GrubMarket,” the “Company,” 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 of 1933, 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. Between November 2019 and February 2021, GrubMarket raised approximately \$80 million from investors in a Series D financing round (“Series D round”), after providing investors with financial statements and other financial information that materially overstated the Company’s historical revenues. The financial statements were prepared by a now former GrubMarket employee with limited accounting experience, Employee A. The financial statements purported to reflect the consolidated results of operations from dozens of independent wholesalers, some of which had rudimentary accounting systems. GrubMarket was negligent in not disclosing that the financial statements and other financial information the Company provided to investors were unreliable.

2. In June 2019, before kicking off marketing for the Series D round, and to improve its finance function, GrubMarket hired as its Corporate Controller a certified public accountant who had an audit background. The Corporate Controller was promoted to the role of Chief Financial Officer in April 2020.¹

3. GrubMarket’s Chief Executive Officer tasked the CFO with creating a consistent accounting infrastructure for GrubMarket’s independent wholesalers and preparing a traceable and supportable set of financial statements to be audited in advance of a potential IPO. Between fall 2019 and February 2021, the CFO provided periodic updates to the CEO about her progress. During this time, GrubMarket also used preliminary revised lower revenue figures for other corporate purposes, including the filing of its federal and state income tax returns. The CFO’s work, which ultimately resulted in material changes to GrubMarket’s financial information, continued throughout the Series D round, which closed in February 2021.

4. The financial statements and other financial information that GrubMarket used to solicit Series D investors overstated revenue by more than \$550 million, or about 130%, between 2016 and 2020. The financial statements and other financial information included revenues attributable to the Company’s independent wholesalers that did not match – and, in several cases, were materially higher than – the revenues the independent wholesalers had reported to GrubMarket.

5. As a result, GrubMarket was negligent for providing to investors financial statements and other financial information that materially overstated its revenues.

6. In January 2021, a Series D investor (“Investor A”) committed to invest \$19 million in GrubMarket but had not yet wired the funds. Thereafter, the revised revenue figures were substantially completed, and GrubMarket began using the revised financial information to solicit new investors for the “Series E” round. GrubMarket negligently failed to inform Investor A of the existence of the revised financials before Investor A wired its \$19 million investment.

¹ For ease of reference, the employee is referred to as the “CFO” throughout.

7. Through the above conduct and material misstatements and omissions, GrubMarket violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Respondent

8. **GrubMarket, Inc.** is a fresh produce and meat provider that uses its proprietary technology and eCommerce platform to serve business customers and end consumers. GrubMarket is a private company incorporated in Delaware in 2014, with its principal place of business in San Francisco, California.

Facts

Background

9. GrubMarket was founded in 2014 with the goal of digitizing the food supply chain industry by developing its proprietary software and eCommerce technology and acquiring produce and meat wholesalers – many of which were small, family-owned-and-operated businesses – and incorporating the proprietary software and eCommerce technology into their business practices.

10. Within a year of its founding, GrubMarket began expanding its operations by acquiring produce and meat wholesalers. From 2015 through 2020, GrubMarket acquired approximately thirty such wholesale operations. The accounting systems at the acquired wholesalers ranged from QuickBooks or other accounting software to paper records. After GrubMarket acquired the wholesale operations, they typically retained their business names and continued to be managed by the former owners.

11. To fund these acquisitions and other operations, GrubMarket raised approximately \$140 million from private investors between 2014 and February 2021 across six fundraising rounds. In connection with this fundraising, GrubMarket provided investors with certain materials, such as its investor presentations and financial information, which included wholesaler- and segment-level revenues, consolidated financial statements, financial projections, and key performance indicator metrics that investors requested.

12. Between 2015 and February 2021, the financial information that GrubMarket provided to investors was prepared by Employee A and authorized by the CEO to be sent to investors (the “working financial information”). Employee A did not interact with investors.

13. In June 2019, five months before its Series D round began, GrubMarket hired the CFO to formalize the Company’s accounting process and to prepare for an audit of the Company’s financial statements in advance of a potential IPO. Shortly after joining GrubMarket, the CFO determined that she could not independently verify the working financial information. Over the next eighteen months, the CFO worked with multiple third-party accounting consultants to develop a supportable and traceable set of GrubMarket financials (the “revised financial information”).

14. By 2020, the CFO's work on the revised financial information began to reveal material differences from the working financial information. But as Employee A and the CFO rarely communicated about their work, the CFO did not understand how Employee A prepared the working financial information. Likewise, Employee A was not aware that the CFO's revised financial information was materially different from the working financial information.

15. GrubMarket continued using the working financial information to solicit Series D investors.

GrubMarket Used Unreliable Financials to Raise \$80 Million from Series D Investors

16. Employee A prepared the working financial information for investors on an ad-hoc basis, updating it whenever an investor requested GrubMarket's financial information. To prepare the working financial information provided to investors, Employee A reviewed bank statements and accounting records for the wholesalers on whatever accounting systems they used and spoke with managers for the wholesalers. Employee A's other responsibilities included overseeing operations and logistics, sourcing and packing produce, and managing payroll, human resources, insurance, and food safety. Despite GrubMarket's rapid growth, it continued to devote limited resources to the preparation of financial information that was shared with investors.

17. Additionally, starting no later than early 2019, GrubMarket occasionally received financial information from certain of its independent wholesalers that was materially different from the wholesaler-level working financial information. GrubMarket did not recognize that the wholesaler-level financial information it received called into question the accuracy of the working financial information that the Company provided to Series D investors.

18. While GrubMarket was using the working financial information to solicit Series D investors, GrubMarket used preliminary versions of the revised financial information for other corporate purposes. For example, between September 2019 and January 2021, GrubMarket used preliminary revised financial information to file GrubMarket's federal and state tax returns and to seek lines of credit and venture debt.

19. Because it was using the preliminary revised financial information – which cast doubt on the accuracy of the working financial information – for other corporate purposes, GrubMarket was negligent in continuing to use the working financial information to solicit Series D investors.

GrubMarket Sold the Final Tranche of Series D After Sending Revised Financial Information to Series E Investors

20. Between October 2020 and January 2021, GrubMarket exchanged phone calls and email communications with Investor A, an existing investor, about investing in the Series D round. It also provided to Investor A, as requested, the working financial information and other materials. Investor A incorporated the working financial information into its analysis in deciding whether to

invest in GrubMarket. In January 2021, Investor A committed to invest \$19 million in the Series D round and informed GrubMarket that it would wire the funds in “early-mid February.”

21. In early February 2021, GrubMarket shared the substantially completed, revised financial information with prospective investors in the upcoming Series E round. The revised financial information showed materially lower revenue figures than were included in the working financial information that GrubMarket provided to investors in the Series D round, including to Investor A.

22. GrubMarket did not immediately inform Investor A of the revised financial information. As a result, when Investor A wired the \$19 million Series D investment to GrubMarket in late February 2021, Investor A was unaware of the revised financial information. GrubMarket subsequently shared the revised financial information with Investor A and other existing investors.

23. The table below shows the magnitude of the difference between GrubMarket’s historical annual revenues stated in the working financial information versus those stated in the revised financial information:

GrubMarket Working Versus Revised Annual Revenue (millions)						
Year	2016	2017	2018	2019	2020	Total
Working Financial Information	32	87	146	255	455	975
Revised Financial Information	15	46	51	116	194	422
Percent Overstatement	113%	89%	186%	120%	135%	131%

GrubMarket Negligently Made Material Misstatements Concerning its Financial Condition

24. Investors considered GrubMarket’s financial information as part of their investment decisions. When GrubMarket solicited prospective investors during the Series D round, the first set of materials the investors sought, and which GrubMarket typically sent immediately after the parties signed a non-disclosure agreement, was an investor presentation that included GrubMarket’s historical revenue, consolidated and segment-level income statements, and the balance sheet and cash flow statement. In making their investment decisions, prospective investors incorporated GrubMarket’s unreliable financial information into their analysis and investment committee memoranda.

Violations

25. As a result of the conduct described above, GrubMarket violated Section 17(a)(2) of the Securities Act, which proscribes, in the offer or sale of a security, obtaining “money or property by means of any untrue statement of a material fact 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.” In addition, GrubMarket also violated Section 17(a)(3) of the Securities Act, which proscribes, in the offer or sale of a security, engaging “in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the

purchaser.” A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685 & 701-02 (1980).

Remediation

26. In determining to accept the Offer, the Commission considered the remedial measures undertaken by GrubMarket before the commencement of the Commission’s investigation, including retaining an outside audit firm and consultants to assist with devising and implementing a centralized accounting system that follows GAAP standards.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent GrubMarket’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent GrubMarket cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$8,000,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. 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) Respondent 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 GrubMarket as a 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 Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalty referenced in paragraph B above. 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
Secretary