

MusclePharm Corp  
Form POS AM  
April 19, 2013

**File No. 333-179515**

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**POST-EFFECTIVE AMENDMENT NO. 1**

**TO**

**FORM S-1**

**REGISTRATION STATEMENT UNDER**

**THE SECURITIES ACT OF 1933**

**MUSCLEPHARM CORPORATION**

(Exact name of registrant as specified in its charter)

<b>Nevada</b>	<b>2834</b>	<b>77-0664193</b>
(State or other jurisdiction of incorporation)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

**4721 Ironton Street, Building A**

**Denver, CO 80239**

**Tel: (303) 396-6100**

(Address and telephone number of registrant's principal executive offices and principal place of business)

**Brad Pyatt**

**5348 Vegas Dr.**

**Las Vegas, NV 89108**

**Tel: (702) 953-1890**

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

Communication Copies to:

**Harvey Kesner**

**Sichenzia Ross Friedman Ference LLP**

**61 Broadway, 32<sup>nd</sup> Floor**

**Tel No.: (212) 930-9700**

**Fax No.: (212) 930-9725**

Approximate date of commencement of proposed sale to the public: **As soon as practicable after this Registration Statement becomes effective.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.  x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act registration Statement number of the earlier effective registration statement for the same offering.  "

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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.

Large accelerated filer " Non-accelerated filer "

Accelerated filer " Smaller reporting company x

**CALCULATION OF REGISTRATION FEE**

Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Aggregate Offering Price per share	Proposed Maximum Aggregate Offering Price	Amount of Registration fee
Common Stock, \$0.001 par value per share, issuable upon the exercise of certain outstanding warrants	3,471	\$ 10.20	(2) \$ 35,400.00	\$ 4.06
Common Stock, \$0.001 par value per share, issuable upon the exercise of certain outstanding warrants	51,471	\$ 8.50	(3) \$ 437,500.00	\$ 50.14
Common Stock, \$0.001 par value per share	303,882	\$ 8.50	(4) \$ 2,583,000.00	\$ 296.01
Total	358,824	-	3,055,900.00	\$ 350.21 (5)

The shares of our common stock and shares underlying warrants being registered hereunder are being registered (1) for sale by the selling stockholders named in the prospectus. All share amounts and per share amounts reflect the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012.

This offering price per share of \$10.20 is calculated based upon the price at which the warrants or rights may be (2) exercised pursuant to Rule 457(g)(1) of the Securities Act of 1933, as amended. This price reflects the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012.

This offering price per share of \$8.50 is calculated based upon the price at which the warrants or rights may be (3) exercised pursuant to Rule 457(g)(1) of the Securities Act of 1933, as amended. This price reflects the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012.

Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act, (4) using the closing price as reported on the Over-the-Counter Bulletin Board (the "OTCBB") on April 9, 2013, which was \$8.91 per share.

(5) This fee has already been paid by the Company.

**THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SUCH SECTION 8(a), MAY DETERMINE.**

**EXPLANATORY NOTE**

On September 17, 2012, the U.S. Securities and Exchange Commission declared effective the registration statement on Form S-1 (the “Registration Statement”) filed by MusclePharm Corporation (the “Company”). The Company is filing this post-effective amendment to the Registration Statement for the purpose of updating its financial and other disclosures. Unless otherwise specifically indicated, all share numbers in this post-effective amendment to the Registration Statement have been adjusted to reflect the 1-for-850 reverse split of our common stock that we effected on November 26, 2012.

The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the U.S. Securities and Exchange Commission (“SEC”) is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

## **PRELIMINARY PROSPECTUS**

*Subject to completion, dated April 19, 2013*

## **MUSCLEPHARM CORPORATION**

### **358,824 SHARES OF COMMON STOCK**

This prospectus relates to the resale of 358,824 shares of our common stock, par value \$0.001 per share, by the selling security holders (the “Selling Security Holders”), including: (i) 51,471 shares underlying warrants held by certain shareholders who purchased common stock purchase warrants in private transactions (the “Investor Warrants”); (ii) 3,471 shares underlying warrants issued to consultants for services rendered pursuant to consulting agreements (the “Consultant Warrants”, and together with the shares underlying the Investor Warrants, the “Warrant Shares”); (iii) 172,005 shares of common stock issued to former warrant holders in exchange for the cancellation of previously outstanding warrants; and (iv) 131,877 shares of common stock issued to certain investors in private placement transactions. All share amounts and per share amounts reflect the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012.

We are not selling any shares of common stock in this offering and, as a result, will not receive any proceeds from this offering. All of the net proceeds from the sale of our common stock will go to the Selling Security Holders.

Our common stock is quoted on the OTCBB under the symbol “MSLP.OB.” On April 9, 2013, the closing bid price of our common stock was \$8.91 per share. This price reflects the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012. These prices will fluctuate based on the demand for our common stock.

**This investment involves a high degree of risk. You should purchase shares only if you can afford a complete loss. See “Risk Factors” beginning on page 5.**

**Neither the SEC nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2013



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You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from that which is contained in this prospectus. This prospectus may be used only where it is legal to sell these securities. The information in this prospectus may only be accurate on the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of securities. This prospectus contains important information about us that you should read and consider carefully before you decide whether to invest in our common stock. If you have any questions regarding the information in this prospectus, please contact Brad Pyatt, our Chief Executive Officer, at: MusclePharm Corporation, 4721 Ironton Street, Denver, CO 80239, or by phone at (303) 396-6100.

## PROSPECTUS SUMMARY

This summary highlights certain information contained elsewhere in this prospectus. Because it is a summary, it may not contain all of the information that is important to you. Before investing in our common stock, you should read this entire prospectus carefully, especially the sections entitled Risk Factors” beginning on page 5 and Management’s Discussion and Analysis of Financial Condition and Results of Operations” beginning on page 34, as well our financial statements and related notes included elsewhere in this prospectus. In this prospectus, the terms MusclePharm,” Company,” we,” us” and our” refer to MusclePharm Corporation.

### Overview

MusclePharm Corporation was initially incorporated in the State of Nevada on August 4, 2006, under the name Tone in Twenty, for the purpose of engaging in the business of providing personal fitness training using isometric techniques (Tone in Twenty”). Tone in Twenty was never able to raise the level of funding necessary to commence operations. On February 18, 2010, the Company acquired all of the issued and outstanding equity and voting interests of Muscle Pharm, LLC, a Colorado limited liability company, in exchange for 26,000,000 pre-split shares of the Company’s common stock. The shares were issued pursuant to that certain Securities Exchange Agreement, dated February 1, 2010 (the Securities Exchange Agreement”). As a result of this transaction, Muscle Pharm, LLC became a wholly owned subsidiary of the Company. The 26,000,000 pre-split shares represented approximately 99.7% of the common stock outstanding following the closing of this transaction. As part of this transaction, the Company’s former President sold his 366,662 pre-split shares to Muscle Pharm, LLC for \$25,000 and these shares were then cancelled.

As part of the Securities Exchange Agreement, the Company agreed to seek shareholder approval of an amendment to the Company’s Articles of Incorporation changing the name of the Company to MusclePharm Corporation.” This amendment was approved by a majority of the Company’s shareholders and the name change became effective on March 1, 2010.

MusclePharm currently manufactures and markets wide-ranging variety of high-quality sports nutrition products, including: Assault <sup>TM</sup>, Battle Fuel <sup>TM</sup>, Bullet Proof <sup>TM</sup>, Combat <sup>TM</sup>, SHRED Matrix®, and Re-con®. These products are comprised of amino acids, herb, and proteins scientifically tested and proven as safe and effective for the overall health of athletes. These nutritional supplements were created to enhance the effects of workouts, repair muscles, and nourish the body for optimal physical fitness.

### Sales & Recent Developments

MusclePharm is an expanding healthy life-style company that develops and distributes a full line scientifically approved nutritional supplements that are 100% free of any banned substances. Based on years of research, MusclePharm products are developed through an advanced six-stage research process involving the expertise of top nutritional scientists and field tested by more than 100 elite professional athletes from various sports including the National Football League, mixed martial arts, and Major League Baseball. The Company's propriety and award winning products address all categories of an active lifestyle, including muscle building, weight loss, and maintaining general fitness through a daily nutritional supplement regimen. MusclePharm products are sold in over 120 countries and available in over 5,000 U.S. retail outlets, including GNC, Vitamin Shoppe, and Vitamin World. The Company also sells its products in over 100 online stores, including bodybuilding.com, amazon.com and vitacost.com.

For the year ended December 31, 2012, two of our customers accounted for approximately 45% of our sales. Our largest customer for the year ended December 31, 2012, accounted for 33% of our sales. For the year ended December 31, 2011, two customers accounted for approximately 55% of our sales and our largest customer represented 41% of our sales. For the year ended December 31, 2011, two customers accounted for approximately 55% of net sales. Our largest customer for the year ended December 31, 2011 represented 41% of our sales.

#### **Where You Can Find Us**

Our principal executive office is located at 4721 Ironton Street, Denver, CO 80239, and our telephone number is (303) 396-6100. Our Internet address is [www.musclepharm.com](http://www.musclepharm.com).

## The Offering

<b>Common Stock Offered by the Selling Security Holders</b>	358,824 shares, including (i) 303,882 shares of common stock and (ii) 54,941 shares underlying warrants. All share amounts and per share amounts reflect the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012.
<b>Common Stock Outstanding Before the Offering</b>	6,816,159 shares of common stock as of April 10, 2012.
<b>Common Stock Outstanding After the Offering</b>	6,816,159 shares of common stock
<b>Terms of the Offering</b>	The selling security holder will determine when and how they will sell the common stock offered in this prospectus.
<b>Termination of the Offering</b>	The offering will conclude upon such time as all of the common stock has been sold pursuant to the registration statement.
<b>Use of Proceeds</b>	We are not selling any shares of common stock in this offering and, as a result, will not receive any proceeds from this offering. See Use of Proceeds.”
<b>Risk Factors</b>	The common stock offered hereby involves a high degree of risk and should not be purchased by investors who cannot afford the loss of their entire investment. See Risk Factors” beginning on page 5.
<b>OTCBB Symbol</b>	MSLP.OB

**SUMMARY OF FINANCIAL INFORMATION**

The following selected financial information is derived from the Company's Financial Statements appearing elsewhere in this Prospectus and should be read in conjunction with the Company's Financial Statements, including the notes thereto, appearing elsewhere in this Prospectus.

***Summary of Statements of Operations*****For the Years Ended December 31 (audited):**

	2012	2011
Sales	\$67,055,215	\$17,212,636
Loss from operations	\$(8,735,811 )	\$(16,220,160)
Other expense	\$(10,216,984)	\$(7,060,790 )
Net loss	\$(18,952,795)	\$(23,280,950)
Net loss per common share - basic and diluted	\$(13.000 )	\$(70.30 )
Weighted average number of common shares outstanding - basic and diluted	1,458,757	331,159

***Statement of Financial Position*****For the Years Ended December 31 (audited):**

	2012	2011
Cash	\$-	\$659,764
Total assets	\$6,766,727	\$5,046,128
Working Capital (Deficit)	\$(11,570,575)	\$(13,693,267)
Long term debt	\$4,523	\$307,240
Stockholders' deficit	\$(9,758,252 )	\$(12,971,212)

## **RISK FACTORS**

*The following discussion and analysis should be read in conjunction with the other financial information and consolidated financial statements and related notes appearing in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results will depend upon a number of factors beyond our control and could differ materially from those anticipated in the forward-looking statements. Some of these factors are discussed below and elsewhere in this prospectus.*

### **Risks Related to Our Business and Industry**

*Our business and operations are experiencing rapid growth. If we fail to effectively manage our growth, our business and operating results could be harmed.*

We have experienced and expect to continue to experience rapid growth in our operations, which has placed, and will continue to place, significant demands on our management, and our operational and financial infrastructure. If we do not effectively manage our growth, we may fail to attain operational efficiencies we are seeking, timely deliver products to our customers in sufficient volume or the quality of our products could suffer, which could negatively affect our operating results. To effectively manage this growth, we expect we will need to hire additional persons, particularly in sales and marketing, and we will need to continue to improve significantly our operational, financial and management controls and our reporting systems and procedures. These additional employees, systems enhancements and improvements will require significant capital expenditures and management resources. Failure to implement these proposed growth objectives would likely hurt our ability to manage our growth and our financial position.

As of April 10, 2013, management has taken over the shipping of most product, other than drop shipments, to our customers from our 152,000 square foot distribution center in Franklin, Tennessee. We have hired a warehouse manager, and relocated two shipping logistic individuals from our Denver, Colorado office to manage shipping. We also hired several local warehouse individuals to manage this process. We believe this efficiency will improve our shipping time and reduce our overall cost of goods sold.

Additionally, the Company has hired six new sales and marketing individuals to continue the expansion and growth of sales. The finance team has added four new staff members and our board of directors appointed a new Chief Financial Officer on July 1, 2012. New controls and procedures have been implemented over sales orders and discounting as well as new financial controls, budgeting processes, daily and monthly monitoring reports along with dashboard reporting for aiding management in making good decisions.

The Company has appointed a five member Board of Directors, three of which are independent by the board. The Company has also appointed an audit committee, and compensation committee. Regular board meetings are held and task lists are reviewed and checked off with members of outside counsel to mitigate issues and promote further improvements around internal controls and reporting which the Company believes is much improved but not yet complete.

***Our failure to respond appropriately to competitive challenges, changing consumer preferences and demand for new products could significantly harm our customer relationships and product sales.***

The nutritional sports supplement industry is characterized by intense competition for product offerings and rapid and frequent changes in consumer demand. Our failure to predict accurately product trends could negatively impact our products and cause our revenues to decline.

Our success with any particular product offering (whether new or existing) depends upon a number of factors, including our ability to:

- deliver products in a timely manner in sufficient volumes;
- accurately anticipate customer needs and forecast accurately to our manufacturers in an expanding business;
- differentiate our product offerings from those of our competitors;
- competitively price our products; and
- develop new products.

Products often have to be promoted heavily in stores or in the media to obtain visibility and consumer acceptance. Acquiring distribution for products is difficult and often expensive due to slotting and other promotional charges mandated by retailers. Products can take substantial periods of time to develop consumer awareness, consumer acceptance and sales volume. Accordingly, some products may fail to gain or maintain sufficient sales volume and as a result may have to be discontinued. In a highly competitive marketplace it may be difficult to have retailers open stock-keeping units (sku's) for new products.

***Our management has determined that certain disclosure controls and procedures may be ineffective, even though they have been improved upon, which could result in material misstatements in our financial statements.***

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Exchange Act. As of December 31, 2012, our management determined that some of our disclosure controls and procedures were ineffective due to weaknesses in our financial closing process.





We intend to implement remedial measures designed to address the ineffectiveness of our disclosure controls and procedures, such as hiring several individuals with significant accounting, auditing and financial reporting experience and segregating our internal and external financial reporting among our larger financing and accounting staff, implementing more specific segregation of our accounting software and providing historical information more timely, such as monthly budgeting analysis and cash reporting. We have also adopted and implemented written procedures to document purchase orders, product discounts and product transition flow as well as analysis of our cost of goods sold. If these remedial measures are insufficient to address the ineffectiveness of our disclosure controls and procedures, or if material weaknesses or significant deficiencies in our internal control are discovered or occur in the future and the ineffectiveness of our disclosure controls and procedures continues, we may fail to meet our future reporting obligations on a timely basis, our consolidated financial statements may contain material misstatements, we could be required to restate our prior period financial results, our operating results may be harmed, we may be subject to class action litigation, and if we gain a listing on a stock exchange, our common stock could be delisted from that exchange. Any failure to address the ineffectiveness of our disclosure controls and procedures could also adversely affect the results of the periodic management evaluations regarding the effectiveness of our internal control over financial reporting and our disclosure controls and procedures that are required to be included in our annual report on Form 10-K. Internal control deficiencies and ineffective disclosure controls and procedures could also cause investors to lose confidence in our reported financial information. We can give no assurance that the measures we plan to take in the future will remediate the ineffectiveness of our disclosure controls and procedures or that any material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or adequate disclosure controls and procedures or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, in the future those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our consolidated financial statements.

***If we fail to comply with the rules under the Sarbanes-Oxley Act of 2002 related to disclosure controls and procedures, or, if we discover material weaknesses and other deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult.***

If we fail to comply with the rules under the Sarbanes-Oxley Act of 2002 related to disclosure controls and procedures, or, if we discover additional material weaknesses and other deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult. Moreover, effective internal controls are necessary for us to produce reliable financial reports and are important to helping prevent financial fraud. If we cannot provide reliable financial reports or prevent fraud, our business and operating results could be harmed, investors could lose confidence in our reported financial information, and the trading price of our common stock could drop significantly. In addition, we cannot be certain that additional material weaknesses or significant deficiencies in our internal controls will not be discovered in the future.

***Our industry is highly competitive, and our failure to compete effectively could adversely affect our market share, financial condition and future growth.***

The nutritional supplement industry is highly competitive with respect to:

- price;
- shelf space and store placement;
- brand and product recognition;
- new product introductions; and
- raw materials.

Most of our competitors are larger more established and possess greater financial, personnel, distribution and other resources than we have. We face competition in the health food channel from a limited number of large nationally known manufacturers, private label brands and many smaller manufacturers of dietary supplements.

***We rely on a limited number of customers for a substantial portion of our sales, and the loss of or material reduction in purchase volume by any of these customers would adversely affect our sales and operating results.***

For the year ended December 31, 2012, two of our customers accounted for approximately 45% of our sales. Our largest customer for the year ended December 31, 2012, accounted for 33% of our sales. For the year ended December 31, 2011, two customers accounted for approximately 55% of our sales and our largest customer represented 41% of our sales. The loss of any of our major customers, a significant reduction in purchases by any major customer, or, any serious financial difficulty of a major customer, could have a material adverse effect on our sales and results of operations.

***Adverse publicity or consumer perception of our products and any similar products distributed by others could harm our reputation and adversely affect our sales and revenues.***

We believe we are highly dependent upon positive consumer perceptions of the safety and quality of our products as well as similar products distributed by other sports nutrition supplement companies. Consumer perception of sports nutrition supplements and our products in particular can be substantially influenced by scientific research or findings, national media attention and other publicity about product use. Adverse publicity from these sources regarding the safety, quality or efficacy of nutritional supplements and our products could harm our reputation and results of operations. The mere publication of news articles or reports asserting that such products may be harmful or questioning their efficacy could have a material adverse effect on our business, financial condition and results of operations, regardless of whether such news articles or reports are scientifically supported or whether the claimed harmful effects would be present at the dosages recommended for such products.

***We rely on highly skilled personnel and, if we are unable to retain or motivate key personnel, hire qualified personnel, we may not be able to grow effectively.***

Our performance largely depends on the talents and efforts of highly skilled individuals. Our future success depends on our continuing ability to identify, hire, develop, motivate and retain highly skilled personnel for all areas of our organization, particularly sales and marketing. Competition in our industry for qualified employees is intense. In addition, our compensation arrangements, such as our bonus programs, may not always be successful in attracting new employees or retaining and motivating our existing employees. Our continued ability to compete effectively depends on our ability to attract new employees and to retain and motivate our existing employees.

***If we are unable to retain key personnel, our ability to manage our business effectively and continue our growth could be negatively impacted.***

Our management employees include Brad J. Pyatt, L. Gary Davis, John H. Bluhner, Jeremy R. DeLuca and Cory J. Gregory. These key management employees are primarily responsible for our day-to-day operations, and we believe our success depends in large part on our ability to retain them and to continue to attract additional qualified individuals to our management team. Currently, we have executed employment agreements with our key management employees. The loss or limitation of the services of any of our key management employees or the inability to attract additional qualified personnel could have a material adverse effect on our business and results of operations.

***Our operating results may fluctuate, which makes our results difficult to predict and could cause our results to fall short of expectations.***

Our operating results may fluctuate as a result of a number of factors, many of which may be outside of our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful, and you should not rely on our past results as an indication of our future performance. Our quarterly, year-to-date, and annual expenses as a percentage of our revenues may differ significantly from our historical or projected rates. Our operating results in future quarters may fall below expectations. Each of the following factors may affect our operating results:

- our ability to deliver products in a timely manner in sufficient volumes;
- our ability to recognize product trends;
- our loss of one or more significant customers;
- the introduction of successful new products by our competitors; and
- adverse media reports on the use or efficacy of nutritional supplements.

Because our business is changing and evolving, our historical operating results may not be useful to you in predicting our future operating results.

***The continuing effects of the most recent global economic crisis may impact our business, operating results, or financial condition.***

The global economic crisis that began in 2008 has caused disruptions and extreme volatility in global financial markets and increased rates of default and bankruptcy, and has impacted levels of consumer spending. These macroeconomic developments could negatively affect our business, operating results, and financial condition. For example, if consumer spending decreases, this may result in lower sales.

***We may be exposed to material product liability claims, which could increase our costs and adversely affect our reputation and business.***

As a marketer and distributor of products designed for human consumption, we could be subject to product liability claims if the use of our products is alleged to have resulted in injury. Our products consist of vitamins, minerals, herbs and other ingredients that are classified as dietary supplements and in most cases are not subject to pre-market regulatory approval in the United States or internationally. Previously unknown adverse reactions resulting from human consumption of these ingredients could occur.

We have not had any product liability claims filed against us, but in the future we may be subject to various product liability claims, including among others that our products had inadequate instructions for use, or inadequate warnings concerning possible side effects and interactions with other substances. The cost of defense can be substantially higher than the cost of settlement even when claims are without merit. The high cost to defend or settle product liability claims could have a material adverse effect on our business and operating results.

***Our insurance coverage or third party indemnification rights may not be sufficient to cover our legal claims or other losses that we may incur in the future.***

We maintain insurance, including property, general and product liability, and workers' compensation to protect ourselves against potential loss exposures. In the future, insurance coverage may not be available at adequate levels or on adequate terms to cover potential losses, including on terms that meet our customer's requirements. If insurance coverage is inadequate or unavailable, we may face claims that exceed coverage limits or that are not covered, which could increase our costs and adversely affect our operating results.



***Our intellectual property rights are valuable, and any inability to protect them could reduce the value of our products and brand.***

We have invested significant resources to protect our brands and intellectual property rights. However, we may be unable or unwilling to strictly enforce our intellectual property rights, including our trademarks, from infringement. Our failure to enforce our intellectual property rights could diminish the value of our brands and product offerings and harm our business and future growth prospects.

***We may be subject to intellectual property rights claims, which are costly to defend, could require us to pay damages and could limit our ability to sell some of our products.***

Our industry is characterized by vigorous pursuit and protection of intellectual property rights, which has resulted in protracted and expensive litigation for several companies. Third parties may assert claims of misappropriation of trade secrets or infringement of intellectual property rights against us or against our end customers or partners for which we may be liable.

As our business expands, the number of products and competitors in our markets increases and product overlaps occur, infringement claims may increase in number and significance. Intellectual property lawsuits are subject to inherent uncertainties due to the complexity of the technical issues involved, and we cannot be certain that we would be successful in defending ourselves against intellectual property claims. Further, many potential litigants have the capability to dedicate substantially greater resources than we can to enforce their intellectual property rights and to defend claims that may be brought against them. Furthermore, a successful claimant could secure a judgment that requires us to pay substantial damages or prevents us from distributing products or performing certain services.

***An increase in product returns could negatively impact our operating results and profitability.***

We permit the return of damaged or defective products and accept limited amounts of product returns in certain instances. While such returns have historically been nominal and within management's expectations and the provisions established, future return rates may differ from those experienced in the past. Any significant increase in damaged or defective products or expected returns could have a material adverse effect on our operating results for the period or periods in which such returns materialize.

***We have no manufacturing capacity and anticipate continued reliance on third-party manufacturers for the development and commercialization of our products.***

We do not currently operate manufacturing facilities for production of our products. We lack the resources and the capabilities to manufacture our products on a commercial scale. We do not intend to develop facilities for the manufacture of products in the foreseeable future. We rely on third-party manufacturers to produce bulk products required to meet our sales needs. We plan to continue to rely upon contract manufacturers to manufacture commercial quantities of our products.

Our contract manufacturers' failure to achieve and maintain high manufacturing standards, in accordance with applicable regulatory requirements, or the incidence of manufacturing errors, could result in consumer injury or death, product shortages, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could seriously harm our business. Contract manufacturers often encounter difficulties involving production yields, quality control and quality assurance, as well as shortages of qualified personnel. Our existing manufacturers and any future contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business. In the event of a natural disaster, business failure, strike or other difficulty, we may be unable to replace a third-party manufacturer in a timely manner and the production of our products would be interrupted, resulting in delays, additional costs and reduced revenues.

***A shortage in the supply of key raw materials could increase our costs or adversely affect our sales and revenues.***

All of our raw materials for our products are obtained from third-party suppliers. Since all of the ingredients in our products are commonly used, we have not experienced any shortages or delays in obtaining raw materials. If circumstances changed, shortages could result in materially higher raw material prices or adversely affect our ability to have a product manufactured. Price increases from a supplier would directly affect our profitability if we are not able to pass price increases on to customers. Our inability to obtain adequate supplies of raw materials in a timely manner or a material increase in the price of our raw materials could have a material adverse effect on our business, financial condition and results of operations.

***Because we are subject to numerous laws and regulations, and we may become involved in litigation from time to time, we could incur substantial judgments, fines, legal fees and other costs.***

Our industry is highly regulated. The manufacture, labeling and advertising for our products are regulated by various federal, state and local agencies as well as those of each foreign country to which we distribute. These governmental authorities may commence regulatory or legal proceedings, which could restrict the permissible scope of our product claims or the ability to manufacture and sell our products in the future. The U.S. Food and Drug Administration, or FDA, regulates our products to ensure that the products are not adulterated or misbranded. Failure to comply with FDA requirements may result in, among other things, injunctions, product withdrawals, recalls, product seizures, fines and criminal prosecutions. Our advertising is subject to regulation by the Federal Trade Commission, or FTC, under the Federal Trade Commission Act. In recent years the FTC has initiated numerous investigations of dietary supplement and weight loss products and companies. Additionally, some states also permit advertising and labeling laws to be enforced by private attorney generals, who may seek relief for consumers, seek class action certifications,

seek class wide damages and product recalls of products sold by us. Any of these types of adverse actions against us by governmental authorities or private litigants could have a material adverse effect on our business, financial condition and results of operations.



***A member of our management team has been involved in a bankruptcy proceeding and other failed business ventures that may expose us to assertions that we are not able to effectively manage our business, which could have a material adverse effect on our business and your investment in our securities.***

Our chief executive officer and co-chairman of our board of directors, Brad J. Pyatt, has been involved in a personal bankruptcy and other failed business ventures. This may expose us to assertions by others that our management team may not know how to effectively run a business. To address this risk, our board of directors has devoted significant time and energy to bolstering our management team with individuals who have public company experience and financial expertise, as well as adding independent board members. Notwithstanding these efforts, if our business partners and investors do not have confidence in our management team, it could have a material adverse effect on our business and your investment in our company.

***Because certain of our stockholders control a significant number of shares of our common stock, they may have effective control over actions requiring stockholder approval.***

As of April 10, 2013, our directors, executive officers, and their respective affiliates, beneficially own approximately 8.1% of our outstanding shares of common stock. Also, two of our executive officers own 51 shares of our Series B Preferred Stock, which has voting control of the Company. As a result, these stockholders, acting together, would have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation or sale of all or substantially all of our assets. In addition, these stockholders, acting together, would have the ability to control the management and affairs of our company. Accordingly, this concentration of ownership might harm the market price of our common stock by:

- delaying, deferring or preventing a change in corporate control;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

***The conversion reset provision relating to our Series D Preferred Stock could result in difficulty for us to obtain future equity financing.***

Because the conversion price reset provisions relating to our Series D Preferred Stock discussed above are so significant and to the potential detriment of common stockholders, it may make it more difficult for us to raise any future equity capital. This potential difficulty should be reviewed in light of our existing levels of little capital and significant working capital deficit. As of the date of issuance of this report approximately 76% of the preferred stock issued in the Series D offering has been converted to common stock, greatly reducing this risk.

***We may, in the future, issue additional shares of common stock, which would reduce investors' percent of ownership and may dilute our share value.***

Our articles of incorporation, as amended, authorize the issuance of 100,000,000 shares of common stock and 10,000,000 shares of preferred stock, of which (i) 5,000,000 shares have been designated as Series A Convertible Preferred Stock, (ii) 51 shares have been designated as Series B Preferred Stock, (iii) 500 shares have been designated as Series C Convertible Preferred Stock and (iv) 1,600,000 shares have been designated as Series D Convertible Preferred Stock. The articles of incorporation authorize our board of directors to prescribe the series and the voting powers, designations, preferences, limitations, restrictions and relative rights of any undesignated shares of our preferred stock. The future issuance of common stock and preferred stock may result in substantial dilution in the percentage of our common stock held by our then existing stockholders. We may value any common stock or preferred stock issued in the future on an arbitrary basis. The issuance of common stock for future services or acquisitions or other corporate actions may have the effect of diluting the value of the shares held by our investors, and might have an adverse effect on any trading market for our common stock.

***We may issue additional shares of preferred stock in the future that may adversely impact your rights as holders of our common stock.***

Our articles of incorporation, as amended, authorize us to issue shares of preferred stock in various series. Currently, we have 51 shares of Series B Preferred Stock issued and outstanding, which shares have voting control of the Company. Each share of our Series A Preferred Stock is convertible into 200 shares of our common stock although no shares of this series are outstanding. Each share of our Series D Convertible Preferred Stock is convertible into two shares of our common stock. In addition, our board of directors has the authority to fix and determine the relative rights and preferences of our authorized but undesignated preferred stock, as well as the authority to issue shares of such preferred stock, without further stockholder approval. As a result, our board of directors could authorize the issuance of a series of preferred stock that would grant to holders preferred rights to our assets upon liquidation, the right to receive dividends before dividends are declared to holders of our common stock, and the right to the redemption of such preferred stock, together with a premium, prior to the redemption of the common stock. To the extent that we do issue such additional shares of preferred stock, your rights as holders of common stock could be impaired thereby, including, without limitation, dilution of your ownership interests in us. In addition, shares of preferred stock could be issued with terms calculated to delay or prevent a change in control or make removal of management more difficult, which may not be in your interest as a holder of common stock.

***Our common stock is quoted on the OTCBB which may have an unfavorable impact on our stock price and liquidity.***

Our common stock is quoted on the OTCBB. The OTCBB is a significantly more limited market than the New York Stock Exchange or the NASDAQ Stock Market. The quotation of our shares on the OTCBB may result in a less liquid market available for existing and potential stockholders to trade shares of our common stock, could depress the trading price of our common stock and could have a long-term adverse impact on our ability to raise capital in the future.

***Nevada corporations laws limit the personal liability of corporate directors and officers and require indemnification under certain circumstances.***

Section 78.138(7) of the Nevada Revised Statutes provides that, subject to certain very limited statutory exceptions or unless the articles of incorporation provide for greater individual liability, a director or officer of a Nevada corporation is not individually liable to the corporation or its stockholders for any damages as a result of any act or failure to act in his or her capacity as a director or officer, unless it is proven that the act or failure to act constituted a breach of his or her fiduciary duties as a director or officer and such breach involved intentional misconduct, fraud or a knowing violation of law. We have not included in our articles of incorporation any provision intended to provide for greater liability as contemplated by this statutory provision.

In addition, Section 78.7502(3) of the Nevada Revised Statutes provides that to the extent a director or officer of a Nevada corporation has been successful on the merits or otherwise in the defense of certain actions, suits or proceedings (which may include certain stockholder derivative actions), the corporation shall indemnify such director or officer against expenses (including attorneys' fees) actually and reasonably incurred by such director or officer in connection therewith.

***Future financings through debt securities and preferred stock may restrict our operations.***

If additional funds are raised through a credit facility or the issuance of debt securities or preferred stock, lenders under the credit facility or holders of these debt securities or preferred stock would likely have rights that are senior to the rights of holders of our common stock, and any credit facility or additional securities could contain covenants that would restrict our operations.

***Our common stock price may be volatile and could fluctuate widely in price, which could result in substantial losses for investors.***

The market price of our common stock has historically been and is likely to be highly volatile and could fluctuate widely in price in response to various factors, many of which are beyond our control, including:

- new products and services by us or our competitors;
- additions or departures of key personnel;
- intellectual property disputes;

- sales of our common stock;
- our ability to integrate operations, technology, products and services;
- our ability to execute our business plan;
- operating results below expectations;
- loss of any strategic relationship;
- industry developments;
- economic and other external factors; and
- period-to-period fluctuations in our financial results.

***If our common stock becomes subject to the SEC's penny stock rules, broker-dealers may experience difficulty in completing customer transactions and trading activity in our securities may be adversely affected.***

Unless our securities are listed on a national securities exchange, or we have net tangible assets of \$5.0 million or more and our common stock has a market price per share of \$5.00 or more, transactions in our common stock will be subject to the SEC's "penny stock" rules. If our common stock remains subject to the "penny stock" rules promulgated under the Exchange Act, broker-dealers may find it difficult to effectuate customer transactions and trading activity in our securities may be adversely affected.

Under these rules, broker-dealers who recommend such securities to persons other than institutional accredited investors must:

- make a special written suitability determination for the purchaser;
- receive the purchaser's written agreement to the transaction prior to sale;
- provide the purchaser with risk disclosure documents which identify certain risks associated with investing in "penny stocks" and which describe the market for these "penny stocks" as well as a purchaser's legal remedies; and
- obtain a signed and dated acknowledgment from the purchaser demonstrating that the purchaser has actually received the required risk disclosure document before a transaction in a "penny stock" can be completed.

As a result, if our common stock becomes or remains subject to the penny stock rules, the market price of our securities may be depressed, and you may find it more difficult to sell shares of our common stock after conversion of

shares of Series D Preferred Stock.

***We have not paid dividends on our common stock in the past and do not expect to pay dividends on our common stock for the foreseeable future. Any return on investment may be limited to the value of our common stock.***

No cash dividends have been paid on our common stock. We expect that any income received from operations will be devoted to our future operations and growth. We do not expect to pay cash dividends on our common stock in the near future. Payment of dividends would depend upon our profitability at the time, cash available for those dividends, and other factors as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on an investor's investment will only occur if our stock price appreciates. Investors in our common stock should not rely on an investment in our company if they require dividend income.

***If securities or industry analysts do not publish research or reports about our business, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. We do not currently have and may never obtain research coverage by industry or financial analysts. If