

MusclePharm Corp
Form POS AM
January 16, 2013

As filed with the Securities and Exchange Commission on January 16, 2013

Registration No. 333-184625

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 1

TO

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)

Nevada	2834	77-0664193
(State or other jurisdiction)	(Primary Standard Industrial	(I.R.S. Employer
of incorporation or organization)	Classification Code Number)	Identification Number)

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Denver, Colorado 80239

Telephone: (303) 396-6100

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Brad J. Pyatt

Co-Chairman, Chief Executive Officer and President

MusclePharm Corporation

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Approximate date of commencement of proposed sale to the public:

As soon as practicable after this Registration Statement is declared 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, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

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

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, 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 Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting 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 of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell and 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 JANUARY 16, 2013

1,500,000 Shares

Series D Convertible Preferred Stock

(3,000,000 Shares of Common Stock underlying the Series D Convertible Preferred Stock)

MusclePharm Corporation is offering up to 1,500,000 shares of its Series D Convertible Preferred Stock, \$0.001 par value per share (the "Series D Preferred Stock") and up to 3,000,000 shares of its common stock, \$0.001 par value per share, in which the Series D Preferred Stock is convertible, pursuant to this prospectus. The Series D Preferred Stock converts at a rate of two shares of common stock for each share of Series D Preferred Stock, subject to adjustment. Further, the conversion of the Series D Preferred Stock is subject to certain ownership limitations described in this prospectus. Proceeds will be deposited in an escrow account and returned to investors in full, without interest or deduction, unless the subscribed shares of Series D Preferred Stock are sold hereby during the offering period. Investors will have no right to the return of their funds during the term of the escrow.

The Series D Preferred Stock is not listed on an exchange, and we do not intend to list the Series D Preferred Stock on any exchange or market. Our common stock is presently quoted on the OTCBB under the symbol "MSLP.OB". On January 15, 2013, the last reported sale price for our common stock on the OTC QB was \$4.23 per share.

We have retained placement agents in this offering, with GVC Capital LLC acting as representative of the placement agents. We have agreed to pay the placement agents' fees as set forth in the table below. The placement agents are not required to sell any specific number or dollar amount of our Series D Preferred Stock in this offering, but will use their reasonable best efforts to solicit orders to purchase our Series D Preferred Stock offered.

Our business and an investment in our securities involve a high degree of risk. See "Risk Factors" beginning on page 7 of this prospectus for a discussion of information that you should consider before investing in our securities.

Neither the Securities and Exchange Commission 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.

	Per Share	Maximum Offering Amount
Public offering price of Series D Preferred Stock	\$	\$
Placement Agents' fees ⁽¹⁾⁽²⁾	\$	\$
Proceeds, before expenses, to us	\$	\$

(1) Does not include additional compensation payable to the placement agents. See "Plan of Distribution" beginning on page 64 of this prospectus for a description of compensation payable to the placement agents.

(2) Does not include compensation deemed to be paid to the representative of the placement agents previously. See "Plan of Distribution" beginning on page 64 of this prospectus for a description of compensation deemed to be received by the placement agent and its affiliates within 180 days prior to the date of this prospectus.

Because there is no minimum offering amount required as a condition to closing in this offering, the actual public offering amount, placement agents' fees and net proceeds to us, if any, in this offering are presently not determinable and may be substantially less than the maximum offering amount set forth in this prospectus.

Delivery of the shares of Series D Preferred Stock and the closing are expected to occur on or about , 2013, subject to customary closing conditions, against payment for such shares to be received by us on the same date.

GVC Capital

The date of this prospectus is , 2013

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You should rely only on the information contained in this prospectus or in any free writing prospectus that we may specifically authorize to be delivered or made available to you. We have not, and the placement agents have not, authorized anyone to provide you with any information other than that contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus may only be used where it is legal to offer and sell our securities. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of our securities. Our business, financial condition, results of operations and prospects may have changed since that date. We are not, and the placement agents are not, making an offer of these securities in any jurisdiction where the offer is not permitted.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our securities, you should carefully read this entire prospectus, including our financial statements and the related notes and the information set forth under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in each case included elsewhere in this prospectus.

Unless otherwise stated or the context requires otherwise, references in this prospectus to “MusclePharm”, the “Company”, “we”, “us”, or “our” refer to MusclePharm Corporation, and information in this prospectus gives effect to the 1-for-850 reverse stock split of our common stock that we effected on November 26, 2012.

MusclePharm Corporation

Business Overview

We develop, market and sell athlete-focused, high quality nutritional supplements primarily to specialty resellers. Our products have been formulated to enhance active fitness regimens, including muscle building, weight loss and maintaining general fitness. Our nutritional supplements are available for purchase in over 10,500 U.S. retail outlets, including Dick’s Sporting Goods, GNC, Vitamin Shoppe and Vitamin World. We also sell our products to over 100 online channels, including bodybuilding.com, amazon.com, gnc.com and vitacost.com. Internationally, our nutritional supplements are sold in over 110 countries, and we expect that international sales will be a significant part of our sales for the foreseeable future.

We started formulating our nutritional supplements in 2008 for consumption by active individuals, high performance athletes and fitness enthusiasts. We launched our sales and marketing programs in late 2008 through our internal sales executives and staff targeting specialty retail distributors.

Our wide-range variety of nutritional supplements, include Assault™, Combat Powder™, MusclePharm MuscleGel®, MusclePharm Shred Matrix®, and Re-Con®. These products are comprised of amino acids, herbs, and proteins tested by our scientists for the overall health of athletes. We developed these nutritional supplements to enhance the effects of workouts, repair muscles, and nourish the body for optimal physical fitness.

Our Growth and Core Marketing Strategy

Our primary growth strategy is to:

· increase our product distribution and sales through increased market penetrations both domestically and internationally;

· increase our margins by focusing on streamlining our operations and seeking operating efficiencies in all areas of our operations;

· continue to conduct additional testing of the safety and efficacy of our products and formulate new products; and

· increase awareness of our products by increasing our marketing and branding opportunities through endorsements, sponsorships and brand extensions.

Our core marketing strategy is to brand MusclePharm as the “must have” fitness brand for workout enthusiasts and elite athletes. We seek to be known as the “athlete’s company”, run by athletes who create their products for other athletes, both professional and otherwise. We believe that our marketing mix of endorsers, sponsorships and providing sample products for our retail resellers to use is an optimal strategy to increase sales.

Recent Developments

Significant Growth in Product Sales

We have recently experienced significant growth in our product sales. Our net sales for the years ended December 31, 2010 and 2011 were \$3.2 million and \$17.2 million, respectively. Our net sales for the nine months ended September 30, 2011 and 2012 were \$10.9 million and \$50.6 million, respectively.

Conversion of Warrants into Common Stock

In late September 2012, we issued 512,631 shares of our common stock to several accredited investors pursuant to conversions of warrants to purchase an aggregate of 723,746 shares of our common stock. As a result of these warrant conversions and other extinguishments of derivative liabilities during the quarter ended September 30, 2012, our stockholders' deficit decreased from \$11,013,113 at June 30, 2012 to \$7,297,593 at September 30, 2012 and our derivative liabilities decreased from \$7,908,860 at June 30, 2012 to \$24,889 at September 30, 2012. On December 7, 2012, we converted a warrant exercisable for 4,902 shares of common stock into 3,677 shares of our common stock. Thereafter, our derivative liability was reduced to approximately \$300 as of December 7, 2012.

Proportionate Reverse Stock Split and Increase in Number of Authorized Shares of Common Stock

On November 26, 2012, we (i) effected a 1-for-850 reverse stock split of our common stock, including a proportionate reduction in the number of authorized shares of our common stock from 2.5 billion shares to 2,941,177 shares of common stock, and (ii) amended our articles of incorporation to increase the number of authorized shares of common stock (post reverse stock split) from 2,941,177 to 100 million effective November 27, 2012. See "Description of Securities" beginning on page 61 of this prospectus.

Bridge Loan

On December 4, 2012, we entered into a \$1.0 million bridge loan to provide us with short-term financing. In connection with the bridge loan, we entered into a subscription agreement with six subscribers pursuant to which we

issued an aggregate \$1.0 million principal amount of promissory notes and 50,000 shares of common stock to the subscribers. The promissory notes are due January 18, 2013 (45-days after the date of the subscription agreement), do not bear interest, and may be pre-paid in full at any time without penalty to us. If not repaid in full at maturity, following a five-day grace period, the default interest rate would be 12% per annum. The events of default under the promissory notes are defined broadly and include failure to pay principal and breach of covenants in the subscription agreement. In the event that we do not close this offering on or before January 18, 2013, we may be unable to repay the bridge loan. Additionally, we granted the subscribers “piggy-back” registration rights for the shares of common stock in certain circumstances. The subscription agreement also contained customary representations and warranties, indemnification provisions, and additional covenants. Pursuant to the terms of the bridge loan, we are required to repay the entire bridge loan upon closing of this offering.

Selected Risks Associated With Our Business

Our business is subject to numerous risks described in the section entitled “Risk Factors” and elsewhere in this prospectus. You should carefully consider these risks before making an investment. Some of these risks include:

Our independent auditors have expressed substantial doubt about our ability to continue as a going concern, which may hinder our ability to obtain future financing;

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

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;

Our management has determined that our disclosure controls and procedures are ineffective which could result in material misstatements in our 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;

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

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;

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 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;

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

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

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

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;

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

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;

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

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

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

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;

There is no minimum amount of gross proceeds that must be raised in this offering and we may be unable to raise any significant capital from this offering. We could therefore continue to have extremely limited capital and will continue to have a significant working capital deficit;

You may experience substantial dilution in the event we issue common stock in the future at a price below \$__ per share;

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

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

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

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

Because we will have broad discretion and flexibility in how the net proceeds from this offering are used, we may use the net proceeds in ways in which you disagree;

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

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

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;

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;

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;

A sale of a substantial number of shares of our common stock may cause the price of our common stock to decline and may impair our ability to raise capital in the future;

You will experience immediate and substantial dilution as a result of this offering and may experience additional dilution in the future;

The reverse stock split may decrease the liquidity of the shares of our common stock;

Following the reverse stock split, the resulting market price of our common stock may not attract new investors, including institutional investors, and may not satisfy the investing requirements of those investors. Consequently, the trading liquidity of our common stock may not improve; and

· There is no public market for the offered securities other than our common stock.

Corporate Information

We were incorporated in Nevada on August 4, 2006, under the name “Tone in Twenty”. On February 18, 2010, Tone in Twenty acquired all of the issued and outstanding equity and voting interests of Muscle Pharm, LLC, a Colorado limited liability company, in exchange for 30,589 shares of its common stock. As a result of this transaction, Muscle Pharm, LLC became a wholly owned subsidiary of Tone in Twenty, and Tone in Twenty changed its name to “MusclePharm Corporation.” Our principal executive offices are located at 4721 Ironton Street, Building A, Denver, Colorado 80239 and our telephone number is (303) 396-6100. Our website address is <http://www.musclepharm.com>. The information on, or that can be accessed through, our website is not part of this prospectus.

Summary of the Offering

Series D preferred stock offered by us 1,500,000 shares of Series D Preferred Stock.

Series D preferred stock outstanding after this offering 1,500,000 shares of Series D Preferred Stock.

Conversion Each holder of the Series D Preferred Stock has the right to convert its Series D Preferred Stock, at the option of the holder, at any time, into shares of our common stock. One share of Series D Preferred Stock shall initially be convertible into two shares of our common stock, which conversion rate may be adjusted based on certain events. See “Description of Series D Preferred Stock” beginning on page 57 of this prospectus.

Limitation on conversion We will not permit the conversion of shares of Series D Preferred Stock by any holder, if after such conversion such holder would beneficially own more than 4.99% (which limitation may be waived by the holder upon 61 days’ advance notice) or 9.99% of our common stock then outstanding. A holder of shares of Series D Preferred Stock may decrease these percentages by written notice to the Company. See “Description of Series D Preferred Stock” beginning on page 57 of this prospectus.

Voting Series D Preferred Stock will vote together with the common stock on an as converted basis, as limited by the conversion limitations.

Series D preferred stock listing Our Series D Preferred Stock will have no public market.

Common stock underlying Series D preferred stock in this offering 3,000,000 shares of common stock.

Common stock to be outstanding after this offering assuming full conversion of Series D preferred stock 5,974,135 shares of common stock.

Use of proceeds We intend to use the net proceeds received from this offering to retire a bridge loan of \$1.0 million and \$3.5 million of debt due on completion of this offering and for working capital and general corporate purposes. See “Use of Proceeds” on page 18 of this prospectus.

Risk factors See “Risk Factors” beginning on page 7 of this prospectus and the other information included in this prospectus for a discussion of factors you should carefully consider before investing in our securities.

Common stock OTC Bulletin Board trading symbol MSLP.OB

Unless we indicate otherwise, all information in this prospectus:

- is based on 2,974,135 shares of common stock issued and outstanding as of January 15, 2013;

- assumes the sale of all shares of Series D Preferred Stock in this offering (but excludes 3,000,000 shares of our common stock issuable upon conversion thereof);

- excludes approximately 226,826 shares of common stock issuable to consultants for no further consideration upon conversion of all shares of Series D Preferred Stock in this offering;

- excludes approximately 118,760 shares of common stock issuable to certain existing stockholders for no further consideration assuming each share of Series D Preferred Stock is issued at \$8.46 per share;

- excludes 1,845 shares of our common stock issuable upon exercise of outstanding options at a weighted average exercise price of \$425.00 per share as of January 15, 2013;

- excludes 89 shares of our common stock issuable upon exercise of outstanding warrants at a weighted average exercise price of \$1,275.00 per share as of January 15, 2013; and

- excludes 129,412 shares of common stock issuable upon vesting and settlement of outstanding restricted stock unit awards as of January 15, 2013.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following tables sets forth our (i) summary statement of operations data for the years ended December 31, 2011 and 2010 and the nine months ended September 30, 2012 and 2011 (unaudited) and (ii) summary consolidated balance sheet data as of September 30, 2012 (unaudited), derived from our audited and unaudited consolidated financial statements and related notes included elsewhere in this prospectus. The summary consolidated financial data for the nine months ended September 30, 2012 and 2011 and as of September 30, 2012 are not indicative of results to be expected for the full year. Our financial statements are prepared and presented in accordance with generally accepted accounting principles in the United States. All share amounts and per share amounts reflect the completed 1-for-850 reverse stock split. The results indicated below are not necessarily indicative of our future performance.

You should read this information together with the sections entitled “Capitalization”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

	Nine Months Ended September 30,		Year Ended December 31,	
	2012 (unaudited)	2011	2011	2010
Statement of Operations:				
Sales – net	\$ 50,563,746	\$ 10,875,249	\$ 17,212,636	\$ 3,202,687
Loss from operations	(6,202,447)	(5,393,337)	(16,220,160)	(18,251,836)
Other income (expense)	35,411	-	(7,060,790)	(1,317,501)
Net income (loss)	(15,927,426)	(12,332,236)	(23,280,950)	(19,569,337)
Series C preferred stock dividend	-	-	(293)	-
Other comprehensive income	7,556	-	-	-
Total comprehensive income (loss)	(15,919,870)	(12,332,236)	(23,280,657)	(19,569,337)
Net income (loss) per share of common stock – basic and diluted	\$ (9.62)	\$ (46.50)	\$ (70.30)	\$ (404.31)
Weighted average number of shares of common stock outstanding – basic and diluted	1,656,219	265,189	331,159	48,402

Balance Sheet Data:	As of September 30, 2012	
	Actual (unaudited)	Pro Forma, As Adjusted ⁽¹⁾ (unaudited)
Cash	\$ 634,870	\$ 12,290,370
Cash – restricted	74,202	74,202
Total assets	7,809,619	19,465,119
Working Capital (Deficit)	(9,114,226)	2,541,274
Long term debt	159,210	159,210
Stockholders’ equity (deficit)	\$ (7,297,593)	\$ 4,357,907

- (1) Pro forma, as adjusted amounts give effect to (i) the issuance of common stock from October 1, 2012 through and immediately prior to the date of this prospectus and (ii) assuming the sale of all shares of Series D Preferred Stock in this offering at the assumed public offering price of \$8.46 per share of Series D Preferred Stock, and after deducting placement agents' fees and other estimated offering expenses payable by us.

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RISK FACTORS

Any investment in our securities involves a high degree of risk. Investors should carefully consider the risks described below and all of the information contained in this prospectus before deciding whether to purchase our securities. Our business, financial condition and results of operations could be materially adversely affected by these risks if any of them actually occur. This prospectus also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks we face as described below and elsewhere in this prospectus.

Risks Related to Our Business and Industry

Our independent auditors have expressed substantial doubt about our ability to continue as a going concern, which may hinder our ability to obtain future financing.

As reflected in the accompanying unaudited interim consolidated financial statements, we incurred a net loss of approximately \$15.9 million for the nine months ended September 30, 2012, and we had a working capital deficit and stockholders' deficit of approximately \$9.1 million and \$7.3 million respectively, at September 30, 2012. Also as reflected in the accompanying financial statements we incurred a net loss of approximately \$23.3 million and used net cash in operations of approximately \$5.8 million for the year ended December 31, 2011, and had a working capital deficit and stockholders' deficit of approximately \$13.7 million and \$13.0 million respectively, at December 31, 2011. These factors raise substantial doubt about our ability to continue as a going concern.

In their report dated April 13, 2012, except for note 1 as to which the date is June 28, 2012, our independent auditors stated that our financial statements for the period ended December 31, 2011, were prepared assuming that we would continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. These financial statements do not include any adjustments relating to the recovery of the recorded assets or the classification of the liabilities that might be necessary should we be unable to continue as a going concern.

Our ability to continue operations is dependent on management's plans to raise more capital, which include this offering, until such time that funds provided by operations are sufficient to fund working capital requirements.

In addition to the net proceeds from this offering, we could require additional funding to finance the growth of our future operations as well as to achieve our strategic objectives. There can be no assurance that future financing will be

available in amounts or terms acceptable to us, if at all.

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.

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 our disclosure controls and procedures are ineffective 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 Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. As of December 31, 2011, our management determined that 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 account, 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.

M deemed necessary.

It is understood and agreed that each of the parties hereto is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such party contained therein, but such party is not responsible for the completeness or accuracy of information concerning the other party unless such party knows or has reason to believe that such information is inaccurate.

It is understood and agreed that a copy of this Agreement shall be attached as an exhibit to the statement on Schedule 13G/A, and any amendments thereto, filed on behalf of each of the parties hereto

Dated: February 14, 2019

RMB Capital Holdings, LLC By: /s/ Walter Clark Name: Walter Clark Title: Manager

**RMB Capital
Management,
LLC**

**Iron
Road
Capital
Partners
LLC**

**RMB
Mendon
Managers,
LLC**

Mendon Capital Advisors Corp

By: /s/ Lisa M. Tamburini
Name: Lisa M. Tamburini
Title: Chief Compliance Officer