

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2013-01-28** | Period of Report: **2013-01-22**
SEC Accession No. [0001144204-13-004317](#)

([HTML Version](#) on [secdatabase.com](#))

FILER

MusclePharm Corp

CIK: [1415684](#) | IRS No.: [770664193](#) | State of Incorporation: **NV** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: [000-53166](#) | Film No.: [13552705](#)
SIC: **2834** Pharmaceutical preparations

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: January 22, 2013
(Date of earliest event reported)

MusclePharm Corporation

(Exact name of registrant as specified in its charter)

NEVADA

(State or other jurisdiction
of incorporation)

000-53166

(Commission File Number)

77-0664193

(IRS Employer Identification No.)

**4721 Ironton Street, Building A
Denver, Colorado 80239**

(Address of principal executive offices) (Zip Code)

(303) 396-6100

(Registrant's telephone number, including area code)

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)).
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).
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ITEM 7.01. Regulation FD Disclosure.

On January 28, 2013, MusclePharm Corporation (the “Registrant”) issued a press release announcing that it held two closings in connection with the offering of up to an aggregate of 1,500,000 shares of Series D Convertible Preferred Stock (the “Preferred Stock”) in a registered direct offering (the “Offering”). A copy of the press release is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information in this Current Report on Form 8-K furnished pursuant to Item 7.01, including Exhibit 99.1, shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), or otherwise subject to liability under that section, and it shall not be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing. By filing this Current Report on Form 8-K and furnishing this information pursuant to Item 7.01, the Registrant makes no admission as to the materiality of any information in this Current Report on Form 8-K, including Exhibit 99.1, that is required to be disclosed solely by Regulation FD.

ITEM 8.01. Other Events.

On January 22, 2013 and January 25, 2013, the Registrant entered into separate subscription agreements with certain investors (the “Investors”) in connection with the Offering, pursuant to which the Registrant sold an aggregate of 511,625 shares of Preferred Stock to the Investors for aggregate gross proceeds of approximately \$4.1 million, before deducting fees to GVC Capital LLC (the “Placement Agent”) pursuant to the placement agency agreement dated January 16, 2013 (the “Placement Agency Agreement”), between the Registrant and the Placement Agent; and other estimated offering expenses payable by the Registrant, of approximately \$400,000. Pursuant to the Certificate of Designation of the Series D Convertible Preferred Stock filed with the Nevada Secretary of State on January 11, 2013 (the “Certificate of Designation”), each share of Preferred Stock is convertible into two shares of common stock, subject to adjustment.

The Registrant intends to use the proceeds from the Offering in the following order of priority: (i) \$1.0 million for repayment of the bridge loan which was used for working capital (ii) \$3.5 million for repayment of outstanding debt, (iii) to pay interest of approximately \$0.1 million, (iv) \$2.1 million for expected accounts payable; and (v) and the remainder for general corporate purposes.

The shares of Preferred Stock offered pursuant to the Offering and the underlying shares of common stock issuable upon conversion of the shares of Preferred Stock were registered under a registration statement on Form S-1 (Registration No. 333-184625), which the Securities and Exchange Commission (“SEC”) declared effective on January 16, 2013.

The Registrant has also agreed to indemnify the Investors against certain losses resulting from its breach of any of its representations, warranties, covenants under agreements with the Investors.

A copy of the opinion of Brownstein Hyatt Farber Schreck, LLP, relating to the legality of the issuance and sale of the Preferred Shares and common stock issuable upon conversion of the Preferred Shares in the Offering is attached as Exhibit 5.1 hereto. A copy of the specimen of certificate of the Preferred Stock is attached as Exhibit 4.1 hereto. The disclosure contained in this Item 8.01 does not purport to be a complete description of the Placement Agency Agreement, the Subscription Agreement and the Certificate of Designation, and is qualified in its entirety in each case by reference to the Placement Agency Agreement, the Subscription Agreement and the Certificate of Designation, which are attached hereto as Exhibits 1.1, 3.1 and 10.1, respectively, and incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K and the documents incorporated herein by reference contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended. Statements that are not a description of historical facts constitute forward-looking statements and may often, but not always, be identified by the use of such words as “expects”, “anticipates”, “intends”, “estimates”, “plans”, “potential”, “possible”, “probable”, “believes”, “seeks”, “may”, “will”, “should”, “could” or the negative of such terms or other similar expressions. Actual results may differ materially from those set forth in this release due to the risks and uncertainties inherent in the Registrant’s business. More detailed information about the Registrant and the risk factors that may affect the realization of forward-looking statements is set forth in the Registrant’s Annual Report on Form 10-K/A for the fiscal year ended December 31, 2011, the Registrant’s Quarter Reports on Form 10-Q and other filings submitted by the Registrant to the SEC, copies of which may be obtained from the SEC’s website at www.sec.gov. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date

hereof. All forward-looking statements are qualified in their entirety by this cautionary statement and the Registrant undertakes no obligation to revise or update this release to reflect events or circumstances after the date hereof.

ITEM 9.01. Financial Statements and Exhibits.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
1.1	Placement Agency Agreement dated January 16, 2013, between MusclePharm Corporation and GVC Capital LLC (incorporated by reference to Exhibit 1.1 to MusclePharm's current report on Form 8-K filed on January 24, 2013).
3.1	Certificate of Designation of the Series D Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to MusclePharm's current report on Form 8-K filed on January 17, 2013).
4.1	Specimen of Certificate for MusclePharm Corporation Series D Convertible Preferred Stock.
5.1	Opinion of Brownstein Hyatt Farber Schreck, LLP.
10.1	Form of Subscription Agreement.
23.1	Consent of Brownstein Hyatt Farber Schreck, LLP (included in Exhibit 5.1).
99.1	Press Release dated January 28, 2013.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MUSCLEPHARM CORPORATION

Dated: January 28, 2013

By: /s/ Brad J. Pyatt

Name: Brad J. Pyatt

Title: Chief Executive Officer and President



NUMBER

SHARES

INCORPORATED UNDER THE LAWS OF THE STATE OF NEVADA

AUTHORIZED: 1,600,000 SERIES D CONVERTIBLE PREFERRED SHARES,
\$0.001 PAR VALUE PER SHARE

SEE REVERSE FOR
CERTAIN DEFINITIONS

This Certifies That

is the owner of

*Fully Paid and Non-Assessable Series D Convertible Preferred Stock, \$0.001 Par Value of
MusclePharm Corporation*

*transferable on the books of this Corporation in person or by attorney upon surrender of this Certificate duly endorsed
or assigned. This Certificate and the shares represented hereby are subject to the laws of the State of Nevada, and to
the Articles of Incorporation and the Bylaws of the Corporation, as now or hereafter amended. This Certificate is not
valid until countersigned by the Transfer Agent.*

*IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by the facsimile
signatures of its duly authorized officers and to be sealed with the facsimile seal of the Corporation.*

Dated:

[Signature]
PRESIDENT / CEO



[Signature]
SECRETARY

Countersigned:
CO-BROKER STOCK TRANSFER, INC.
3200 Cherry Creek South Drive, Suite 430
Denver, CO 80209
By _____ Transfer Agent and Registrar/Authorized Officer

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THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THOSE RESTRICTIONS ON TRANSFER OR REGISTRATION OF TRANSFER SET FORTH IN THE CERTIFICATE OF DESIGNATION FOR THE SERIES D CONVERTIBLE PREFERRED STOCK. ANY STOCKHOLDER MAY OBTAIN FROM THE PRINCIPAL OFFICES OF THE CORPORATION, UPON REQUEST AND WITHOUT CHARGE, A STATEMENT OF SUCH CERTIFICATE OF DESIGNATION AND THE POWERS, DESIGNATIONS, PREFERENCES, AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AUTHORIZED TO BE ISSUED AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS.

MusclePharm Corporation
CORPORATE STOCK TRANSFER, INC.
TRANSFER FEE: AS REQUIRED

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT -

Custodian

(Cust) (Minor)
under Uniform Gifts to Minors

Act _____
(State)

Additional abbreviations may also be used though not in the above list.

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer unto

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE

_____ Shares of the Preferred Stock represented by the within Certificate and do hereby irrevocably constitute and appoint

_____ Attorney to transfer the said stock on the books of the within-named Corporation, with full power of substitution in the premises.

Dated: _____ 20 _____,

Signature(s) Guaranteed: _____ Signature: X _____

Signature: X _____

THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER. THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15.





January 22, 2013

MusclePharm Corporation
4721 Ironton Street, Building A
Denver, Colorado 80239

Ladies and Gentlemen:

We have acted as special Nevada counsel to MusclePharm Corporation, a Nevada corporation (the “Company”), in connection with (i) the issuance and sale by the Company of up to 1,500,000 shares (the “Preferred Shares”) of the Company’s Series D Convertible Preferred Stock, par value \$0.001 per share (the “Preferred Stock”), pursuant to the Placement Agency Agreement, dated as of January 16, 2013, by and between the Company and GVC Capital LLC (the “Placement Agency Agreement”) and each of the Subscription Agreements (as defined in the Placement Agency Agreement), and (ii) the proposed issuance by the Company of up to 3,000,000 shares (the “Common Shares”) of the Company’s common stock, par value \$0.001 per share, (the “Common Stock”) issuable upon conversion of the Preferred Shares, all as described in the Company’s Registration Statement on Form S-1 and the Prospectus dated January 17, 2013, contained therein (File No. 333-184625) (collectively, the “Registration Statement”) filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”). This opinion letter is being furnished pursuant to the requirements of Item 601(b)(5) of Regulation S-K under the Act.

In our capacity as such counsel, we are familiar with the proceedings taken by the Company in connection with the authorization of the Preferred Shares and the issuance and sale thereof as contemplated by the Placement Agency Agreement, and with the proceedings taken and proposed to be taken by the Company in connection with the authorization of the Common Shares and issuance thereof upon conversion of the Preferred Shares pursuant to the terms thereof, all as described in the Registration Statement. For purposes of this opinion letter, and except to the extent set forth in the opinions expressed below, we have assumed all such proceedings have been timely completed or will be timely completed in the manner presently proposed and the terms of such issuances have been or will be in compliance with applicable laws.

For purposes of rendering this opinion letter, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of (i) the Registration Statement, (ii) the Company’s articles of incorporation, as amended to date, including the Certificate of Designation of the Series D Convertible Preferred Stock filed with the Nevada Secretary of State on January 11, 2013, (iii) the Company’s bylaws, as amended to date, (iv) the Placement Agency Agreement, including the form of the Subscription Agreement and (v) such other documents, agreements, instruments and corporate records as we have deemed necessary or appropriate. We have also obtained from officers, representatives and agents of the Company and from public officials, and have relied upon, such certificates, representations and assurances as we have deemed necessary and appropriate for the purpose of issuing this opinion letter.

bhfs.com

100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
main 702.382.2101
Brownstein Hyatt Farber Schreck, LLP

Without limiting the generality of the foregoing, in our examination, we have, with your permission, assumed without independent verification, that (i) each natural person executing any such documents has sufficient legal capacity to do so; (ii) all documents submitted to us as originals are authentic, the signatures on all documents that we examined are genuine, and all documents submitted to us as certified, conformed, photostatic, electronic or facsimile copies conform to the original document; and (iii) all corporate records made available to us by the Company, and all public records we have reviewed, are accurate and complete.

We are qualified to practice law in the State of Nevada. The opinions set forth herein are expressly limited to the effect of the general corporate laws of the State of Nevada in effect as of the date hereof and we do not purport to be experts on, or to express any opinion herein concerning, or to assume any responsibility as to the applicability to or the effect on any of the matters covered herein of, the laws of any other jurisdiction. We express no opinion concerning, and we assume no responsibility as to laws or judicial decisions related to, or any orders, consents or other authorizations or approvals as may be required by, any federal laws, rules or regulations, including any federal securities laws, rules or regulations, or any state securities or “Blue Sky” laws, rules or regulations.

Based on the foregoing, and in reliance thereon, and having regard to legal considerations and other information that we deem relevant, we are of the opinion that:

1. The Preferred Shares have been duly authorized by the Company and, when and to the extent the Preferred Shares are issued and sold in exchange for payment in full to the Company of all consideration required therefor in the manner contemplated by the Placement Agency Agreement and the Subscription Agreements, and in accordance with the proceedings described therein and in the Registration Statement, the Preferred Shares will be validly issued, fully paid and non-assessable.

2. The Common Shares have been duly authorized by the Company and, when and to the extent the Common Shares are issued in accordance with the all applicable terms and conditions of the Preferred Stock (including after due and proper conversion of the applicable Preferred Shares in accordance with the terms and conditions thereof) and as described in the Registration Statement, the Common Shares will be validly issued, fully paid and non-assessable.

The opinions expressed herein are based upon the applicable Nevada law in effect and the facts in existence as of the date of this opinion letter. In delivering this opinion letter to you, we disclaim any obligation to update or supplement the opinions set forth herein or to apprise you of any changes in such laws or facts after the date hereof. No opinion is offered or implied as to any matter, and no inference may be drawn, beyond the strict scope of the specific issues expressly addressed by the opinion set forth herein.

We consent to your filing this opinion letter as an exhibit to the Current Report on Form 8-K of the Company and the incorporation by reference of this opinion in the Registration Statement, and to the reference to our firm in the Prospectus under the heading “Legal Matters”. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,
/s/ Brownstein Hyatt Farber Schreck, LLP

SUBSCRIPTION AGREEMENT

This Subscription Agreement (this “Agreement”) is dated as of _____, 2013, between MusclePharm Corporation, a Nevada corporation (the “Company”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “Purchaser”).

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to an effective registration statement under the Securities Act (as defined below), the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1.1. Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Closing” means the closing of the purchase and sale of the Shares pursuant to Section 2.1.

“Closing Date” means the third Trading Day following the date hereof or such other date as the Placement Agent and the Company may agree in writing, in either case, on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers’ obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the Shares, in each case, have been satisfied or waived.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the shares of the Company’s common stock, par value \$0.001 per share.

“Escrow Agent” means the Escrow Agent as defined in the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement dated January 9, 2013, between the Company, the Placement Agent and Signature Bank, a New York State chartered bank.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“FINRA” means the Financial Industry Regulatory Authority.

“Material Adverse Effect” means (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and its Subsidiary, taken as a whole, (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document; or (iv) from the date hereof to the Closing Date, trading in the Common Stock or quotation on the over the counter bulletin board shall not have been suspended by the Commission or FINRA, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State banking authorities. For the purpose of this Agreement, the terms Material Adverse Effect or material adverse change shall not include any such effects resulting, directly or indirectly, from the filing of the Prospectus or the performance of the transactions contemplated by, or pursuant to, the Placement Agency Agreement or this Agreement.

“Offering” means the issuance and sale by the Company of the Shares to the Purchasers under the Registration Statement and this Agreement.

“Per Share Purchase Price” equals \$8.00, subject to adjustment as provided in the Certificate of Designation that may occur after the date of this Agreement.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Placement Agency Agreement” means the Placement Agency Agreement dated January 16, 2013, between the Company and the Placement Agent.

“Placement Agent” means GVC Capital LLC, a Colorado limited liability company.

“Preferred Shares” means the shares of the Company’s Series D Convertible Preferred Stock, par value \$0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed prior to the Closing. The terms of the Preferred Shares are set forth in a certificate of designation (the “Certificate of Designation”) filed with the Secretary of State of the State of Nevada on January 11, 2013.

“Preliminary Prospectus” means each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of the Placement Agency Agreement.

“Pricing Prospectus” means the Preliminary Prospectus, subject to completion, dated January 16, 2013, that was included in the Registration Statement immediately prior to the Time of Sale.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus” means the final prospectus in the form first furnished to the Placement Agent for use in the Offering.

“Registration Statement” means the effective registration statement on Form S-1 (as amended by post-effective amendment) filed with the Commission (file no. 333-184625) which registers the sale of the Shares (including the shares of Common Stock issuable upon conversion thereof) to the Purchasers (including the documents incorporated by reference therein, if any).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Shares” means the Preferred Shares issued or issuable to each Purchaser pursuant to this Agreement.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for Shares hereunder as specified below on the signature page of this Agreement in United States dollars and in immediately available funds.

“Subsidiary” means Canada MusclePharm Enterprises Corp.

“Time of Sale” with respect to any Purchaser, means the time of receipt and acceptance of an executed copy of this Agreement from such Purchaser.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means the principal trading market in the United States on which the shares of Common Stock are listed or quoted for trading on the date in question.

“Transaction Documents” means this Agreement, the Certificate of Designation and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means Corporate Stock Transfer, the current transfer agent of the Company, with a mailing address of 3200 Cherry Creek Drive South, Suite 430, Denver, Colorado 80209 and a facsimile number of 303-282-5800, and any successor transfer agent of the Company.

ARTICLE II. PURCHASE AND SALE

2.1. Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of 1,500,000 Shares. Each Purchaser shall deliver to the Company, via wire transfer or a certified check, immediately available funds equal to such Purchaser’s Subscription Amount as set forth on the signature page hereto executed by such Purchaser and the Company shall deliver to each Purchaser its respective Shares as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Section 2.2 and Section 2.3, the Closing shall occur at the offices of Sichenzia Ross Friedman Ference, LLP, counsel for the Placement Agent, located at 61 Broadway, Suite 3200, New York, NY 10006, or such other location as the parties shall mutually agree.

2.2. Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) this Agreement duly executed by the Company;

(ii) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver on an expedited basis the number of Shares equal to such Purchaser’s Subscription Amount divided by the Per Share Purchase Price, registered in the name of such Purchaser;

(iii) the Pricing Prospectus and Prospectus (which may be delivered in accordance with Rule 172 under the Securities Act); and

(b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered:

(i) to the Escrow Agent, such Purchaser’s Subscription Amount by wire transfer to the account designated in writing by the Company as set forth in Appendix B hereto;

(ii) to the Company, this Agreement duly executed; and

(iii) to the Company, a completed Investor Suitability Questionnaire attached hereto in Appendix A.

2.3. Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing with respect to each Purchaser are subject to the following conditions being met:

(i) the accuracy in all material respects on the Closing Date of the representations and warranties of such Purchaser contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of such Purchaser required to be performed at or prior to the Closing Date shall have been performed; and

(iii) the delivery by such Purchaser of such Purchaser's Subscription Amount and the items in Section 2.2(b)(ii) and (iii).

(b) The respective obligations of each Purchaser hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement; and

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof.

2.4 Subscription Agreements; Purchasers. The Company proposes to enter into subscription agreements in substantially the form of this Agreement (collectively with this Agreement, the "Agreements") with certain other investors (collectively with the Purchaser, the "Purchasers").

2.5 Placement Agent. The Purchaser acknowledges that the Company has agreed to pay the Placement Agent in respect of the sales of the Shares to the Purchaser.

2.6 Escrow Agreement. The Purchaser acknowledges that its Subscription Amount will be released by the Escrow Agent to the Company at the Closing pursuant to the terms and conditions of the Escrow Agreement without any further instruction or consent from the Purchaser. The Closing will occur upon satisfaction, in the judgment of the Company and the Placement Agent, of the conditions set forth in Section 2.3 of this Agreement.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties of the Company. The Company hereby represents and warrants to each Purchaser as follows. The following representations and warranties also apply to the Subsidiary, whether so expressed or not, unless the context clearly requires otherwise.

(a) Organization, Good Standing and Power; Subsidiary. The Company has been duly incorporated or organized, is validly existing as a corporation or other legal entity in good standing (or the foreign equivalent thereof) under the laws of its jurisdiction of incorporation and has the requisite corporate power to own, lease and operate its properties and assets and to conduct its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary except for any jurisdiction(s) (alone or in the aggregate) in which the failure to be so qualified will not have or reasonably be expected not to have a Material Adverse Effect.

The Subsidiary is a direct subsidiary of the Company. The Company (i) owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens (as such term is defined below), and (ii) all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities, except as otherwise described in the Registration Statement and the Prospectus.

(b) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and perform this Agreement and to issue and sell the Shares in accordance with the terms hereof (and to issue the Common Stock issuable upon conversion of the Shares) and to file the Certificate of Designation. The execution, delivery and performance of this Agreement by the Company, the consummation by it of the transactions contemplated hereby and the filing of the Certificate of Designation have been duly and validly authorized by all necessary action on the part of the Company, and no further action, consent or authorization of the Company or its Board of Directors or stockholders is required in connection therewith. Each Transaction Document to which it is a party has been (or upon delivery will have been) duly executed and delivered by the Company. Each Transaction Document, and the Shares, constitute the valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by equitable principles of general application and insofar as indemnification and contribution provisions may be limited by applicable law.

(c) Capitalization. As of January 15, 2013, but prior to the issuance of any Shares pursuant to this Agreement, the authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, of which 2,974,135 are issued and outstanding, and 10,000,000 shares of preferred stock, par value \$0.001 per share, of which (i) 5,000,000 shares have been designated as Series A Convertible Preferred Stock, none of which are issued and outstanding, (ii) 51 shares have been designated as Series B Preferred Stock, 51 of which are issued and outstanding, (iii) 500 shares have been designated as Series C Convertible Preferred Stock, none of which are issued and outstanding and (iv) 1,600,000 shares have been designated as Series D Convertible Preferred Stock, none of which are issued and outstanding. All of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable, have been issued in compliance with federal and state securities laws.

The Articles of Incorporation and Bylaws of the Company, each amended to date, currently on file with the Commission (as so amended, the "Charter Documents") are true and correct. All of the outstanding shares of capital stock of the Company have been duly and validly authorized and are fully paid and non-assessable. None of the Shares (or shares of Common Stock issuable upon conversion of the Shares) are subject to preemptive rights, except as otherwise described in the Registration Statement and the Prospectus. The Company is not a party to, and it has no knowledge of, any agreement restricting the voting of any shares of Common Stock or restricting the transfer of its securities.

Except as set forth in that certain Securities Purchase Agreement dated July 10, 2012 (the "July 10 Securities Purchase Agreement"), no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as described in the Company's SEC Reports, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any Shares or shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any subsidiary is or may become bound to issue additional Shares or shares of Common Stock or common stock equivalents, other than as a result of the purchase and sale of the Shares or the conversion of the Shares. Except as disclosed in the Registration Statement and in the July 10 Securities Purchase Agreement, the issuance and sale of the Shares, and the issuance of Common Stock upon conversion of the Shares, will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Shares or the conversion of the Shares into Common Stock. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders that are not described in the SEC Reports.

(d) Issuance of the Shares; Registration. At Closing, the Shares to be sold to the Purchaser (and the shares of Common Stock issuable upon conversion thereof) will be duly and validly authorized by all necessary corporate action and, when the Shares are paid for in accordance with the terms hereof (and when the shares of Common Stock are issued upon conversion of the Shares), will be validly issued and outstanding, fully paid and non-assessable shares of the capital stock of the Corporation. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement and the Shares. The Company has prepared and filed the Registration Statement in conformity with the requirements of the Securities Act, which became effective on January 14, 2013 (the "Effective Date"), including the Prospectus contained therein at the time of effectiveness (the "Prospectus"), and such amendments and supplements thereto as may have been required to the Effective Date. The Registration Statement is effective under the Securities Act and no stop order preventing or suspending the effectiveness of the Registration Statement or suspending or preventing the use of the Prospectus has been issued by the Commission and no proceedings for that purpose have been instituted or, to the knowledge of the Company, are threatened by the Commission. At the time the Registration Statement and any amendments thereto became effective, and at the Closing Date, the Registration Statement and any amendments thereto conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and the Prospectus and any amendments or supplements thereto, at time the Prospectus or any amendment or supplement thereto was issued and at the Closing Date, conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company meets all of the requirements for the use of Form S-1 under the Securities Act for the offering and sale of the Shares contemplated by this Agreement and the other Transaction Documents, and the Commission has not notified the Company of any objection to the use of the form of the Registration Statement pursuant to Rule 401(g)(1) under the Securities Act. The Registration Statement meets the requirements set forth in Rule 415(a)(1)(x) under the Securities Act. The Company and the Placement Agent have made or caused to be made all filings required to be made with the FINRA in connection with the offer and sale of the Shares hereunder.

(e) No Conflicts. The execution, delivery and performance of this Agreement by the Company, and the performance by the Company of its obligations contemplated herein and under the Transaction Documents do not and will not (i) violate any provision of the Charter Documents, (ii) conflict with, or constitute a default under any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company is a party, or (iii) create or impose a lien, mortgage, security interest, charge or encumbrance of any nature on any property of the Company under any agreement or any commitment to which the Company is a party or by which the Company is bound or by which any of its respective properties or assets are bound, except, with respect to clauses (ii) and (iii) above, to the extent any such contravention would not result in a Material Adverse Effect.

(f) Financial Statements. The Company's audited financial statements for the fiscal years ended December 31, 2011 and 2010, and unaudited financial statements for the three and nine months ended September 30, 2012 and 2011 on file with the Commission have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") applied on a consistent basis during the periods involved (except as may be otherwise indicated in such financial statements or the notes thereto). Since the date of the latest audited financial statements on file with the Commission, except as specifically disclosed in a subsequent SEC Report (as defined below) filed prior to the date hereof, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans.

(g) Title to Assets. The Company has good and marketable title to all of its owned real and personal property whether tangible or intangible (collectively, the “Assets”), free and clear of any mortgages, pledges, charges, liens, security interests, claim, community property interest, condition, equitable interest or other encumbrances, license, option, right of first refusal or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership (“Liens”), except as described in the Registration Statement and the Prospectus.

(h) Taxes. The Company has accurately prepared and filed all material foreign, federal, state income and all other tax returns, reports and declarations required by law to be paid or filed by it by any jurisdiction to which the Company is subject. The Company has no knowledge of any assessments, adjustments or contingent tax liability (whether federal or state) of any nature whatsoever, whether pending or threatened against the Company for any period, nor of any basis for any such assessment, adjustment or contingency. The Company has complied in all material respects with all applicable legal requirements relating to the payment and withholding of taxes and, within the time and in the manner prescribed by law, has withheld from wages, fees and other payments, and paid over to the proper governments or regulatory authorities, all amounts required.

(i) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.1 of this Agreement, (ii) the filing with the Secretary of State of Nevada of the Certificate of Designation, or (iii) such filings as are required to be made under applicable state securities laws.

(j) SEC Reports. The Company has filed with the Commission all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2010 (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, together with the Prospectus, being collectively referred to herein as the “SEC Reports”) on a timely basis. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(k) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the Effective Date or in the Registration Statement, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. Except for confidential treatment requests described in the SEC Reports, the Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Shares and Common Stock contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiary or their respective business, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed on or before the date that this representation is made.

(l) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, its Subsidiary, or its properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign, including FINRA) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Shares or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. None of the Company and its directors and officers, in their capacities as such, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission or FINRA involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act.

(m) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information which is not otherwise disclosed in the Prospectus. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All disclosures furnished by or on behalf of the Company to the Purchasers regarding the Company, its business and the transactions contemplated hereby are true and correct and did not and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(n) Regulatory Permits. Except as set forth in the SEC Reports, the Company and the Subsidiary possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (“Material Permits”), and neither the Company nor any subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. The Company and its Subsidiary have good and marketable title in fee simple to all real property owned by them and good and marketable title to all personal property owned by them that is material to the business of the Company and its Subsidiary, in each case free and clear of all Liens, except for Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiary and Liens for the payment of federal, state or other taxes, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and its Subsidiary are held by them under valid, subsisting and enforceable leases with which the Company and its Subsidiary are in compliance with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and facilities by the Company and its Subsidiary.

(p) No Integrated Offering. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Shares to be integrated with prior offerings by the Company for purposes of any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(q) Patents and Trademarks. To the knowledge of the Company, the Company owns or has the right to use all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or material for use in connection with its business (collectively, the “Intellectual Property Rights”). Except as otherwise disclosed in writing to the Placement Agent, (i) the Company has not received a notice (written or otherwise) that any of the Intellectual Property Rights used by the Company violates or infringes upon the rights of any Person and (ii) the Company is unaware of any infringement by a third party of any of the Company’s Intellectual Property Rights. To the knowledge of the Company, all of its Intellectual Property Rights are enforceable. The Company and its Subsidiary have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual property.

(r) Insurance. The Company and its Subsidiary are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and its Subsidiary are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate Subscription Amount. Neither the Company nor any subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(s) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company or any subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of \$120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(t) Sarbanes-Oxley. The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 that are applicable to it as of the Closing Date.

(u) Certain Fees. Except as set forth in the Placement Agent Agreement, no brokerage or finder’s fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchaser shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(v) Investment Company. The Company is not, and immediately after receipt of payment for the Shares, will not be an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

(w) Registration Rights. Except as set forth in the SEC Reports, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company as a result of the transactions contemplated by this Agreement.

(x) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or that to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. Except as set forth in the SEC Reports, the Company has not, in the 12 months preceding the Effective Date, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. Except as disclosed in the SEC Reports, the Company is in compliance with all such listing and maintenance requirements.

(y) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchaser as a result of the Purchaser and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including, without limitation as a result of the Company's issuance of the Shares and Common Stock and the Purchaser's ownership of the Shares and Common Stock.

(z) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Purchaser or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. The Company acknowledges and agrees that the Purchaser does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(aa) Foreign Corrupt Practices. Neither the Company, nor to the knowledge of the Company, any agent or other person acting on behalf of the Company, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(bb) Accountants. The Company's independent registered public accounting firm is identified in the Prospectus and such accounting firm is a registered public accounting firm as required by the Exchange Act.

(cc) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Purchaser or any of its respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Shares. The Company further represents to the Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(dd) Acknowledgement Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding Regulation M adopted by the Commission, it is understood and acknowledged by the Company that: (i) the Purchaser has not been asked by the Company to agree, nor has the Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) past or future open market or other transactions by the Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities; (iii) the Purchaser, and counter-parties in "derivative" transactions to which the Purchaser is a party, directly or indirectly, presently may have a "short" position in the Common Stock, and (iv) the Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) the Purchaser may engage in hedging activities at various times during the period that the Shares are outstanding, including, without limitation, during the periods that the value of the Common Stock deliverable with respect to Shares are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(ee) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Shares (including any Common Stock), (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Shares (including any Common Stock), or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Placement Agent in connection with the placement of the Shares.

(ff) FDA. As to each product subject to the jurisdiction of the U.S. Food and Drug Administration (“FDA”) under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder (“FDCA”) that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or its Subsidiary (each such product, a “Product”), except as described in the SEC Reports, such Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under FDCA and similar laws, rules and regulations, to the extent applicable to the Company’s business as presently conducted, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect. None of the Company or its Subsidiary has received any notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Product, (iii) imposes a clinical hold on any clinical investigation by the Company or its Subsidiary, (iv) enjoins production at any facility of the Company or its Subsidiary, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or its Subsidiary, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or its Subsidiary, and which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. Except as described in the SEC Reports, the Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company.

(gg) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Shares, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Shares, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Placement Agent in connection with the placement of the Shares.

3.2. Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows:

(a) Organization; Authority. Such Purchaser, if an entity, is an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and performance by such Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Understandings or Arrangements. Such Purchaser is acquiring the Shares as principal for its own account and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Shares (this representation and warranty not limiting such Purchaser's right to sell the Shares in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Shares hereunder in the ordinary course of its business.

(c) Trading Activities. The Purchaser's trading activities with respect to the Shares shall be in compliance with all applicable federal and state securities laws.

(d) Estimates; Forward-Looking Statements. The Purchaser acknowledges that any and all estimates or forward-looking statements or projections with which it may have been provided (collectively, the "Information") were prepared by the Company in good faith, but that the attainment of any such projections, estimates or forward-looking statements cannot be guaranteed, will not be updated by the Company and should not be relied upon. The Purchaser further acknowledges that any and all information regarding the historical performance of the Company is not necessarily indicative of future performance.

(e) No Representations. No oral or written representations have been made, or oral or written information furnished, to the Purchaser or its advisors, if any, in connection with the offering of the Shares which are in any way inconsistent with the information contained in the Prospectus.

ARTICLE IV. OTHER AGREEMENTS OF THE PARTIES

4.1. Securities Laws Disclosure; Publicity. The Company shall (a) by 9:00 a.m. (Eastern time) on the Trading Day immediately following the date hereof, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except (a) as required by federal securities law in connection with the filing of final Transaction Documents (including signature pages thereto) with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations.

4.2. Indemnification of Purchasers. Subject to the provisions of this Section 4.2, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur (but specifically excluding any incidental, indirect, punitive, special or consequential damages) as a result of or relating to any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents.

4.3. Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement or under any Transaction Document unless the same consideration is also offered to all of the parties affected by such amendment or consent. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Shares or otherwise.

4.4. Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.1. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.1, such Purchaser will maintain the confidentiality of the existence and terms of this transaction.

4.5. Shares. If all or any portion of a Share is exercised at a time when there is an effective registration statement to cover the issuance of the Common Stock issuable upon conversion of the Shares, the Common Stock issued pursuant to any such exercise shall be issued free of all legends. If at any time following the Effective Date the Registration Statement (or any subsequent registration statement registering the issuance of the Common Stock) is not effective or is not otherwise available for the issuance of the Common Stock, the Company shall immediately notify the holders of the Shares in writing that such registration statement is not then effective and thereafter shall promptly notify such holders when the registration statement is effective again and available for the issuance of the Common Stock (it being understood and agreed that the foregoing shall not limit the ability of the Company to issue, or the Purchaser to sell, any of the Shares in compliance with applicable federal and state securities laws). The Company shall use its best efforts to keep a registration statement (including the Registration Statement) registering the issuance of the Common Stock issuable upon conversion of the Shares effective during the term of the Shares are outstanding.

4.6. Furnishing of Information. Until the date on which no Shares are outstanding, the Company shall timely file all reports required to be filed with the Commission pursuant to the Exchange Act, and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

4.7. Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Shares or the Common Stock for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.8. Shareholder Rights Plan. To the extent permitted by law, no claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that the Purchaser is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that the Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Shares and Common Stock under the Transaction Documents or under any other agreement between the Company and the Purchaser.

4.9. Use of Proceeds. The Company shall use the net proceeds from the sale of the Shares as provided in the Prospectus.

4.10. Reservation of Common Stock. As of the Effective Date, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement and Common Stock pursuant to any conversion of the Shares (without regard to any limitations on the exercise of the Shares set forth therein).

4.11. Listing of Common Stock. The Company hereby agrees to use best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which it is currently listed, and the Company shall promptly secure the listing of all of the Common Stock on such Trading Market (but in no event later than the Closing Date). The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application the Common Stock, and will take such other action as is necessary to cause all of the Common Stock to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market.

4.12. Placement Agent. In consideration for acting as placement agent in connection with the sale of the Shares hereunder, the Placement Agent shall receive a commission of four percent (4%) of the gross proceeds raised in this offering of Shares plus a non-accountable expense allowance of 1% of such proceeds.

ARTICLE V.
MISCELLANEOUS

5.1. Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before February 28, 2013; provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2. Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Shares to the Purchasers.

5.3. Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, the Pricing Prospectus, and the Prospectus, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4. Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder by the Company to a Purchaser shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via fax at the fax number set forth on the signature pages attached hereto at or prior to 5:30 p.m. (Eastern time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via fax at the fax number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (Eastern time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications to the Purchasers shall be as set forth on the signature pages attached hereto.

Any notice required or permitted to be provided hereunder by the Company to any Purchaser shall include a copy to counsel to the Placement Agent:

Sichenzia Ross Friedman Ference, LLP
61 Broadway, Suite 3200
New York, NY 10006
(212) 930-9700
(212) 930-9725 (fax)
Attn: Harvey Kesner, Esq.
Hkesner@srff.com

5.5. Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding at least a majority in interest of the Shares based on the initial Subscription Amounts hereunder held by Purchasers as of the date of such waiver, modification, supplement or amendment. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

5.6. Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Shares, provided that such transferee agrees in writing to be bound, with respect to the transferred Shares, by the provisions of the Transaction Documents that apply to the “Purchasers.”

5.8. No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.2 and this Section 5.8.

5.9. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of the Transaction Documents, then the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for its reasonable attorneys’ fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.10. Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Shares.

5.11. Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by fax or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such fax or “.pdf” signature page were an original thereof.

5.12. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13. Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever the Purchaser exercises a right, election, demand or option under a Transaction Document (other than under the Subscription Agreement with respect to the purchase of the Shares) and the Company does not timely perform its related obligations within the periods therein provided, then the Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of an conversion of Shares, the Company shall return to the Purchaser any aggregate exercise, conversion or other purchase price paid to the Company with respect to such conversion and the Company shall restore the Purchaser's right to acquire the shares of Common Stock pursuant to the conversion of Purchaser's Shares (including, issuance of a replacement Share certificate evidencing such restored right). For the absence of doubt, nothing contained in this Section 5.13 shall authorize or permit the Purchaser to rescind or withdraw the Purchaser's obligation to purchase or the Company's agreement to accept the purchase of Shares under the Subscription Agreement, which obligations shall not be subject to any rescission right of the Purchaser. For the avoidance of doubt, the Purchaser shall not have any rescission or withdrawal rights under this Section 5.13, for a conversion request (and only for such particular conversion request) if the Company issues and delivers shares of its Common Stock to the Purchaser prior to the Purchaser's invocation of such rescission or withdrawal rights. Notwithstanding the foregoing, the invocation or lack of invocation of any Purchaser's rescission or withdrawal rights under this Section 5.13, shall not prohibit or affect such Purchaser's rights under this Section 5.13 relating to any subsequent conversion request.

5.14. Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents.

5.15. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.16. WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

[Signature pages immediately follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Subscription Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

MUSCLEPHARM CORPORATION

By: _____

Name: Brad J. Pyatt

Title: Chief Executive Officer and President

Address for notice:

4721 Ironton Street, Building A

Denver, Colorado 80239

Attention: Brad J. Pyatt, CEO

With a copy to (which shall not constitute notice):

Jones & Keller, P.C.

Attn: Reid A. Godbolt, Esq.

1999 Broadway, Suite 3150

Denver, Colorado 80202

[Purchaser signature pages immediately follow.]

[Purchaser signature pages to MusclePharm Corporation Subscription Agreement]

IN WITNESS WHEREOF, the undersigned have caused this Subscription Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Subscription Amount: \$ _____

No. of Shares of Series D Convertible Preferred Stock: _____

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Fax Number of Authorized Signatory: _____

Soc. Sec./Tax ID No.: _____

Address for Notice to Purchaser:

Address for Delivery of shares of Series D Convertible Preferred Stock to Purchaser (if not same as address for notice):

MUSCLEPHARM CLOSSES \$4.1 MILLION OFFERING OF SERIES D CONVERTIBLE STOCK

DENVER, COLORADO – January 28, 2013 – **MusclePharm Corporation** (OTC.QB: **MSLP.OB**) (“MusclePharm” or the “Company”), a nutritional supplement company focused on active lifestyles, announced today it successfully completed two closings of a registered direct offering of its Series D Convertible Preferred Stock. The Frost Group, LLC, headed by Miami entrepreneur Dr. Phillip Frost, was the lead investor in the offering increasing his position in the Company by approximately \$1.4 million dollars.

At the closings, MusclePharm issued 511,625 shares of its Series D Convertible Preferred Stock in a registered direct placement of its shares at a per share price of \$8.00. Each share of Series D Convertible Preferred Stock is convertible into two shares of common stock, subject to adjustment. The net proceeds to MusclePharm from the closings were approximately \$3.5 million after deducting placement agent fees and offering expenses.

GVC Capital LLC acted as the lead placement agent for this offering.

The shares described above were registered pursuant to a registration statement on Form S-1 (File No. 333-184625), which was declared effective by the Securities and Exchange Commission (“SEC”) on January 16, 2013. A prospectus relating to the offering was filed with the SEC on January 17, 2013.

This release shall not constitute an offer to sell or the solicitation of an offer to buy any securities of MusclePharm, nor shall there be any sale of securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction. Any offer will be made only by means of a prospectus forming a part of the effective registration statement. Copies of the final prospectus can be obtained at the SEC’s website at <http://www.sec.gov> or from GVC Capital LLC, 5350 S. Roslyn Street, Suite 400, Greenwood Village, CO 80111, by calling (303) 694-0862, Attn: Dick Huebner.

ABOUT MUSCLEPHARM CORPORATION

MusclePharm is a healthy lifestyle company that develops and manufactures nutritional supplements that address active lifestyles, including muscle building, weight loss and maintaining general fitness through a daily nutritional supplement regimen. The products are formulated through a six-stage research process using the expertise of leading nutritional scientists. MusclePharm’s products are sold to consumers in more than 110 countries and available in over 10,500 U.S. retail outlets, including Dick’s Sporting Goods, GNC, Vitamin Shoppe and Vitamin World. MusclePharm products also are sold through more than 100 online channels globally, including bodybuilding.com, amazon.com and vitacost.com. For more information, please visit www.musclepharm.com.

FORWARD-LOOKING STATEMENTS

This release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended. Statements that are not a description of historical facts constitute forward-looking statements and may often, but not always, be identified by the use of such words as “expects”, “anticipates”, “intends”, “estimates”, “plans”, “potential”, “possible”, “probable”, “believes”, “seeks”, “may”, “will”, “should”, “could” or the negative of such terms or other similar expressions. Actual results may differ materially from those set forth in this release due to the risks and uncertainties inherent in the Company’s business. More detailed information about the Company and the risk factors that may affect the realization of forward-looking statements is set forth in the Company’s Annual Report on Form 10-K/A for the fiscal year ended December 31, 2011, the Company’s Quarter Reports on Form 10-Q and other filings submitted by the Company to the SEC, copies of which may be obtained from the SEC’s website at www.sec.gov. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement and the Company undertakes no obligation to revise or update this release to reflect events or circumstances after the date hereof.

For more information, please contact:

The Del Mar Consulting Group, Inc.
Robert B. Prag, President
Telephone: 858-794-9500
Email: bprag@delmarconsulting.com

or

Alex Partners, LLC
Scott Wilfong, President
Telephone: 425-242-0891
Email: Scott@alexpartnersllc.com
