

MusclePharm Corp  
Form 10-K/A  
July 02, 2012

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington D.C. 20549**

**FORM 10-K/A (Amendment No. 1)**

**x ANNUAL REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended: **December 31, 2011**

**.. TRANSITION REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number: **000-53166**

**MusclePharm Corporation**

(Exact name of registrant as specified in its charter)

**Nevada** **77-0664193**  
(State or Other Jurisdiction of  
(I.R.S. Employer Identification No.)  
Incorporation or Organization)

**4721 Ironton Street, Building A**

**Denver, CO 80239**  
(Address of principal executive offices)

**(303) 396-6100**

(Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Exchange Act: **None**

Securities registered under Section 12(g) of the Exchange Act: **Common Stock, par value \$0.001 per share**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  
Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by checkmark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Non-accelerated filer

Accelerated filer  Smaller reporting company

Edgar Filing: MusclePharm Corp - Form 10-K/A

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  
" No

The aggregate market value of registrant's voting and non-voting common equity held by non-affiliates (as defined by Rule 12b-2 of the Exchange Act) computed by reference to the average bid and asked price of such common equity on June 30, 2011, was \$5,637,180. As of June 29, 2012, the registrant has one class of common equity, and the number of shares outstanding of such common equity was 1,399,074,207.

**TABLE OF CONTENTS**

<b>PART I</b>	1
Item 1. Business.	1
Item 1A. Risk Factors.	10
Item 1B. Unresolved Staff Comments.	16
Item 2. Properties.	16
Item 3. Legal Proceedings.	16
Item 4. Mine Safety Disclosures.	17
<b>PART II</b>	18
Item 5. Market For Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.	18
Item 6. Selected Financial Data.	19
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.	19
Item 7A. Quantitative and Qualitative Disclosures About Market Risk.	26
Item 8. Financial Statements and Supplementary Data.	26
Item 9. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.	26
Item 9A. Controls and Procedures.	26
Item 9B. Other Information.	27
<b>PART III</b>	28
Item 10. Directors, Executive Officers and Corporate Governance.	28
Item 11. Executive Compensation.	32
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.	36
Item 13. Certain Relationships and Related Transactions, and Director Independence.	37
Item 14. Principal Accounting Fees and Services.	38
<b>PART IV</b>	39
Item 15. Exhibits, Financial Statements Schedules.	39
<b>SIGNATURES</b>	42

**Explanatory Note**

On May 14, 2012, MusclePharm Corporation's (the "Company") independent registered public accounting firm and the Company's board of directors (the "Board") determined, after consultation with Company management that the

## Edgar Filing: MusclePharm Corp - Form 10-K/A

Company's audited financial statements for the period ended December 31, 2011 and December 31, 2010, filed in an annual report on Form 10-K with the Securities and Exchange Commission (the "Commission") on April 16, 2012 and April 1, 2011, respectively, contained certain material misstatements. Our financial statements contained in this amended annual report on Form 10-K/A restate a previous error in accounting for the Company's calculation of net sales and presentation of general and administrative expenses. The Company has determined that advertising related credits that were granted to customers fell within the guidance of ASC No. 605-50-55 ("Revenue Recognition" - Customer Payments and Incentives - Implementation Guidance and Illustrations).

The foregoing guidance indicates that, absent evidence of benefit to the vendor, appropriate U.S. GAAP treatment requires netting these types of payments against revenues and not expensing as advertising expense. The Company also noted other credits and discounts that, upon further review, had been previously classified as advertising expense as a component of general and administrative expense that require a reallocation of presentation as amounts to be netted against gross revenues. Additionally, for the year ended December 31, 2011, the Company reclassified certain items classified as samples originally included as an advertising expense to cost of sales. There were no such reclassifications for 2010.

The Company previously deducted certain credits and promotions as general and administrative expenses. After a thorough analysis and review as noted above, the Company has determined to net any credits and promotions directly against gross sales instead of classifying the same amounts as an advertising expense. Because this accounting change is a reclassification of expenses in the Company's Consolidated Statements of Operations, the Company's net loss will not be affected by the restatement, nor does the restatement affect the net loss amounts reported in its unaudited quarterly financial statements during 2011 or audited Consolidated Balance Sheets at December 31, 2011 and December 31, 2010 or Consolidated Statement of Equity at December 31, 2011 and December 31, 2010 or Consolidated Statements of Cash Flows for the year ended December 31, 2011 and December 31, 2010.

## **PART I**

### **Item 1. Business.**

#### **General**

Headquartered in Denver, Colorado, MusclePharm Corporation (“MusclePharm” or the “Company”) is an expanding healthy lifestyle company that develops and manufactures a full line of scientifically approved (NSF International approved) nutritional supplements that are 100% free of any banned substances. Based on years of research, MusclePharm products are created through an advanced six-stage research protocol involving the expertise of top nutritional scientists. These products are field tested by more than 100 elite professional athletes from various sporting organizations including the National Football League, mixed martial arts, and Major League Baseball. The Company’s award-winning proprietary products address all categories of an active lifestyle including, muscle building, weight loss and maintaining general fitness through a daily nutritional supplement regimen. MusclePharm is a marketing and branding company. It does not directly manufacturer or ship to end user customers. We extend and market the brand while innovating and distributing new products. Our customers are re-sellers of our products.

The Company’s headquarters in Denver, CO, features has a state-of-the-art exercise and weight lifting facility, with a full size octagon UFC™ fighting cage, an indoor football field, cardio work-out equipment and a state-of-the-art on-site medical department, complete with equipment for measuring and conducting clinical studies and supporting athletes. A staff team of medical and clinical professionals is on hand to assist with training. MusclePharm products are sold in over 120 countries and available in over 10,000 U.S. retail outlets, including Wal-Mart, Dicks Sporting Goods, GNC, Vitamin Shoppe, and Vitamin World. The Company also sells its products in over 100 online stores, including bodybuilding.com, amazon.com and vitacost.com.

#### **Business Strategy**

Our primary focus at the current time is on the following:

- (1) Increase our distribution and sales through domestic and international growth and market penetration;
- (2) Conduct additional testing of the safety and efficacy of our products and create new products; and

- (3) Create marketing and branding opportunities through endorsements, sponsorships and brand extensions to increase brand awareness.

### **The Sports Nutrition and High Energy Supplement Market**

The sports nutrition and high energy supplement market is comprised of sports beverages, sports food and sports supplements. According to BCC Research's 2008 Global Research Report, sports beverages maintain the largest market share, with approximately \$24.9 billion in annual sales in 2007. The sports food segment had approximately \$1.2 billion in annual sales and the sports supplement segment saw 2007 annual sales of approximately \$1.1 billion. BCC projected that the sports supplement market would reach \$2.3 billion by 2013.

According to BCC Research, the United States is the largest consumer market for sports nutrition products, with annual sales reaching approximately \$22 billion in 2007, and projected sales of \$29 billion in 2013. Western Europe and Japan are the second and third largest consumers. The key market drivers for sports nutrition products are taste, price, variety and brand loyalty. In recent years, the consumption of sports nutrition products has shifted to mainstream consumers who have become the key drivers of growth within the industry.

### **Current Products**

We currently offer seventeen (17) high-quality, specially-formulated, athlete-focused supplement products. These include: Assault™, Armor-V, Battle Fuel™, Bullet Proof®, Combat Powder®, MuscleGel®, Shred Matrix®, Re-con®, BCAA 3:1:2™, Glutamine™, Creatine™, Casein™, CLA Core™, ZMA Max™, Hybrid - NO™. We also offer the private label products Recover Elite™ and Perform Elite™ under the MMA Elite™ name. These are distributed directly to Wal-Mart and Walgreens. Our products are comprised of amino acids, herbs and proteins scientifically tested and proven as safe and effective for the overall health of athletes. These nutritional supplements were created to enhance the effects of workouts, repair muscles, and nourish the body for optimal physical fitness. The following is a brief description of each of our products:

**Assault™**

*Pre-Performance Amplifier*

Fuel power for long-lasting energy;  
Enhance focus; and  
Build lean muscle mass.

Assault™ helps fight fatigue, boost performance, build muscle, increase intensity, hydrate muscles and feed them valuable, clinically-proven nutrients like ConCrete, Beta Alanine, BCAAs and Cinnulin. Our team of sports medicine specialists worked with top professional athletes to create a safe pre-workout that increases strength, aerobic and anaerobic performance, reduces stomach fat and meets all regulations when it comes to being free of banned substances. Assault™ is specifically designed for performance-boosting pre-workout power.

**Battle Fuel™**

*Maximizes Workout Performance with No Side Effects*

Increases aggression and focus;  
Boosts testosterone and feeds anabolism; and  
promotes cellular health and recovery.

Battle Fuel™ helps athletes increase lean mass and strength, improve endurance and energy levels, naturally detoxify and enhance aggressive mental focus. Battle Fuel™ is an herbal formula that improves testosterone levels to drive strength, power and lean muscle mass development. An intense combination of cleansing agents and natural elements reduce fatigue and improve cellular immunity.

**Bullet Proof™**

*Advanced Nighttime Recovery System*



- Promotes deep sleep to maximize repair;
- Optimizes anabolic/anti-catabolic environment; and
- Stimulates growth hormone/testosterone output.

Bullet Proof™ helps increase recovery effectiveness and hormonal up-regulation, improve lean muscle tissue growth and help relieve some forms of pain. Deep nourishing sleep is an athlete's best friend for the long-term building of strength, mass and speed. During this rest period, key ingredients like our proprietary blend of essential amino acids, Beta Alanine and zinc magnesium aspartate (ZMA) are hard at work repairing tissue and staving off muscle breakdown. Other ingredients boost your immune system and reduce swelling, preparing the body for that next hard workout.

### **Combat™**

#### *Feeds Muscle Up To 8 Hours*

- Technologically advanced protein super-food;
- Enhances digestion of nutrients; and
- Maximizes adaptive response to hard training.

Combat™ helps you: receive 25 grams of high quality protein, fuel fat loss, support healthy body composition, nourish lean muscle and speed recovery. Combat™ is designed to help fill that gap in nutrition many athletes and super-active people experience, to ensure their bodies are growing and recovering. The staggered absorption rate of the five different protein components guarantees a complete 8-hour nutrient infusion.

## **Re-con®**

### *Post-Workout Recharger*

~~O~~ptimize an athlete's "anabolic window";  
~~P~~romote post workout growth & repair; and  
~~R~~eplenish vital nutrients.

Re-con ® helps athletes recover quicker and more effectively, repair muscle cells, feed the body nutrients and grow stronger with ingredients like base-change amino acids (BCAAs), essential amino acid complexes (EAAs), cellular detoxifiers, muscle-loading carbohydrates and stress hormone regulators. This maximizes an athlete's anabolic window, the post-workout phase where the body repairs and rebuilds tissue. Re-con® nourishes and promotes growth from every angle, delivering proteins and nutritious elements in their ideal forms. Recon® provides muscle reconstruction nutrition.

## **MuscleGel®**

### *Delicious On-The-Go Protein and Nutrition*

~~S~~tay leaner and be healthier;  
~~P~~roteins absorbs into the athlete's body easier; and  
~~N~~utritious and easy to enjoy.

MuscleGel® helps athletes receive more of the nutrients the body needs every day, shed pounds and fat and enjoy the convenience of the ready-to-eat packs. Packed full of different proteins like "building block" amino acids, MuscleGel's® patented gel format yields a fast-absorbing, highly bio-available source of next generation fitness food. For protein, carbohydrates and vitamins, MuscleGel® delivers. It works on-the-go, fills you up quickly and streams right to those parts of the athlete's body where nutrients are needed most.

## **SHRED Matrix®**

### *Multi-Level Weight Loss System*

~~R~~amps up your metabolism;  
~~S~~uppresses hunger and cravings; and  
~~B~~urns fat through all-natural herbs.

SHRED Matrix ® helps burn fat naturally, counteract mood swings and help athletes stay focused on weight loss and results. This 8-Stage Weight Loss System is for people who exercise regularly. As a total body diet, it sheds pounds, burns fat cells and attacks fat loss from every angle. Proven ingredients like Sugar Stop™ and the enzyme aid matrix also keep your appetite in check. The formula is tuned so athletes won't experience "jitters" or a crash.

### **Armor-V™**

#### *Advanced Multi-Vitamin Complex*

~~C~~omplete source of vitamins and minerals;  
~~T~~otal immune system support; and  
~~A~~dded B vitamins and probiotics.

Armor-V™ helps athletes receive a full dose of important vitamins and minerals, keep vital organs like the liver clean of toxins, recover faster and keep the body's hormones balanced. This system was designed to meet the standards of professional athletes, who need a dedicated source of vitamins and minerals. Loaded with anti-oxidants and system optimizers derived from fruits and vegetables, Armor V™ brings together organic, herbal and natural ingredients into a multi-nutrient complex that benefits active bodies.

## **BCAA™**

### *Rapidly Absorbed Branched Chain Amino Acid Complex*

Delivers BCAAs before and after workout;  
Minimizes muscle damage; and  
100% pharmaceutical grade.

BCAA™ helps you: receive ideal amounts of BCAAs, Leucine, Isoleucine and Valine from this patented ratio of 3:1:2, promote muscle development and maintenance, increase lean body mass and spur weight loss. BCAAs are part of the group of essential amino acids a body needs. Our patented 3:1:2 ratio is designed to release the ideal amounts of each amino acid both before and after a workout. This prevents muscle breakdown and leads to gains in body mass without losing weight.

## **Creatine**

### *Five Superior Blends of Creatine*

Promote strength, power and endurance;  
No loading; and  
100% pharmaceutical quality.

MusclePharm MP Core Series Creatine™ increases creatine status by enhancing uptake and bioavailability and also fuels stamina, strength and lean muscle growth. Many athletes who engage in high-intensity/short duration exercises like weightlifting use creatine. The clinically-proven ingredient Cinnulin heightens absorption, which assists our five pure and diverse creatine complexes, delivering a range of benefits launched directly into muscles. MP Creatine™ increases explosive energy, ATP energy and overall power.

## **ZMA Max™**

### *Anabolic Mineral Support Formula with Fenugreek®*

Increases testosterone;  
Promotes deep, healing sleep; and  
Supports healthy libido function

MusclePharm ZMA Max™ supports muscle growth and recovery, promotes deeper and more efficient sleep to maximize healing, tissue repair, anabolic hormone production and testosterone levels. It delivers the benefits of precise dosages and ZMA ingredient ratios, and adds the synergistic effects of clinically-proven Fenugreek® to support the balance of cholesterol levels as well as increase of healthy libido function in women and men.

### **CLA Core™**

*Supports Healthy Body Composition*

Aids in weight loss;  
Increases metabolic rates; and  
Reduces body fat

CLA Core™ supports energy sources for hard-training people on low-carb diets, induces muscle gains without buildup of fatty tissue, and helps protect the joints. CLA is a high-quality linoleic acid that is naturally occurring and helps you feel healthy and energized. Many researchers believe that this fatty acid also helps reduce body fat and increase muscle mass. CLA Core is a blend of Omega-6 and medium-chain triglycerides (MCTs).

## **Casein™**

### *100% Micellar Casein Protein*

Delivers 25g of protein;  
Serves as ideal nighttime protein source; and  
Doubles as digestive enzyme and probiotic blend.

Casein™ delivers a steady, prolonged release of amino acids, works hard while body is at rest and promotes added nutrient utilization through the natural enzymes. As a slow digesting protein, Casein repairs and rebuilds muscle at night while you are asleep—feeding your muscles even hours after you went to bed. The great-tasting shake also works overtime readying you for that next day's workout.

## **Hybrid N.O.™**

### *Nitric Oxide Amplifier*

Dramatically enhance muscle pumps  
Increase muscle fullness and vascularity  
Maximize vasodilation

Hybrid N.O.™ promotes muscle pumps through enhanced vasodilation, utilizes GlycoCarn™, a scientifically-researched nitric oxide booster, and encourages blood flow throughout the muscles. Hybrid N.O. promotes higher exercise tolerance by increasing levels of plasma nitrite and nitrate, which increases systemic nitric oxide bioavailability. Hybrid N.O. delivers maximum muscle pumps and increased health.

## **Glutamine**

### *Rapidly Absorbed Glutamine Complex*

- Increase recovery time;
- Enhance muscle growth; and
- 100% pharmaceutical grade.

MusclePharm Core Series MP Glutamine™ supplement increases whole body glutamine status by enhancing an athlete's uptake, bioavailability and digestion. Feeding the body a dedicated source of glutamine ultimately provides optimal muscle-tissue saturation through an exclusive array of three pure, yet diverse nutritional glutamine complexes that deliver a substantial range of benefits. MP Glutamine™ helps athletes rehydrate, rebuild and recover from even the toughest of workouts quicker and more efficiently.

## **PERFORM Elite™**

### *Pre-Performance Amplifier*

- Fuel power for long-lasting energy;
- Increase strength & endurance;
- Enhance focus & intensity; and
- Build lean muscle mass.

Perform Elite™ helps: fight fatigue, boost performance, build muscle, amp up intensity, hydrate muscles and feed muscle cells the nutrients they need. People need a pre-workout supplement because it prepares them to stay focused, energetic and fully-powered from start to finish. In Perform Elite™, ingredients like creatine and beta alanine feed muscle cells the nutrients they need to grow bigger and stronger. Without a pre-workout like Perform Elite™, muscles don't have the building blocks they need to gain size and strength.

## **RECOVER Elite™ (540g)**

### *Post-Workout Recharger*

Optimize athletes' "muscle building";  
Promote post workout growth & repair;  
Replenish vital nutrients; and  
Speed recovery time.

Recover Elite™ helps athletes recover quicker and more effectively, repair muscle cells, maintain nutrient levels and grow bigger and stronger. When people work out, their muscle cells break down. In that post-workout period, it is important to feed these cells a supply of the right nutrients like the ones in Recover Elite™, so they can rebuild properly. When this is done correctly, muscles become both stronger and larger. If you don't use a post-workout supplement, these cells don't have the building blocks they need to recover and you won't increase size or strength.

## **Future Products**

We have trademarked and registered an energy product for active lifestyles and competitive athletes, under the name Energel®. This product will be distributed primarily via internet sales, convenience stores, cycling shops, ski shops, and fitness and runner shoes retail sales stores by the end of the second quarter of 2012.

## **Sales & Distribution**

We sell our products both domestically and internationally. With respect to domestic sales, we have three traditional distribution systems:

1) Approximately 40% of sales are through a domestic Internet site named Bodybuilding.com ("Body Building"), which is the largest online retailer of sports nutrition products in the United States. Body Building awarded MusclePharm the title of the "Breakout Brand," "Best Packaging" and "Best New Product for Assault" in 2011 and MusclePharm is now the number two best-selling brand on BB.com, and has two products in their top ten best sellers, and eight products in the top fifty selling products out of over 14,000 sku's. In addition to Body Building.com, we also sell domestically through several distributors and over 100 Internet sites;



- 2) We sell through traditional brick and mortar stores, and are carried in approximately 450 The Vitamin Shoppes outlets and we sell our products into over 5000 GNC stores, and we are in 400 Vitamin World retail stores;

We have regional salesmen that support wholesale distributors like Europa, selling in up to 15,000 smaller retail or regional stores. We also work with other large distributors who have begun to place the Company's product in small 3)retail stores and gyms across the United States. Internationally, we are expanding rapidly into Central America, Mexico, Brazil, the Middle East, Europe, Russia, and the UK, and have Sportika Export as our international distributor that services over 120 countries.

In addition, we just recently launched a partnership with Eurpac to distribute our line of products to U.S. military bases and stores all over the world.

### **Marketing Strategy**

Our core marketing strategy is to brand MusclePharm as the "must have" nutritional supplement line for high performance athletes. We want to be known as the athlete's company, run by athletes who create their products for other athletes both professional and otherwise. We have endorsements from over 50 UFC fighters, well-known NFL players, as well as top X-Game and fitness athletes. Athletes are considered role models and many people strive to emulate their fitness and well-being regimen. Athlete sponsorships are the most logical tactic for our business. The objective of these athletic endorsements is to build both consumer awareness and confidence and to drive consumer demand for our products.

MusclePharm in 2011 became the Official Supplement Provider and Sponsor of the Ultimate Fighting Championship (“UFC”). Our agreement includes prominent logo placement on the mat, and our branding can be seen on Fox and pay-per-view worldwide.

The fighters we sponsor feature our brand on their uniforms and we also extensively advertise at the Ultimate Fighting Championship events. In 2011, we launched a state-of-the-art website that will tap into the social networking world, further expanding our brand and consumer awareness.

The Company is also currently engaged in various in-store promotions, including point-of-purchase stands, aisle displays in our retail outlets, as well as sample demonstrations and athlete appearances in Wal-Mart, GNC, Vitamin World and Vitamin Shoppe locations.

### **Research and Development**

Each and every product sold by MusclePharm is the end result of a long development process involving leading nutrition scientists, doctors, and top professional athletes.

### **Manufacturing and Product Quality**

We are committed to producing and selling highly efficacious products that are trusted for their quality and safety. To date, our products have been outsourced to a third party manufacturer where the products are manufactured in full compliance with the Good Manufacturing Practice standards set by the Food & Drug Administration.

### **Trademarks and Patents**

We regard our trademarks and other proprietary rights as valuable assets and believe that protecting our key trademarks is crucial to our business strategy of building strong brand name recognition. These trademarks are crucial elements of our business, and have significant value in the marketing of our products.

Our policy is to pursue registrations for all of the trademarks associated with our products. Federally registered trademarks have a perpetual life, provided that they are maintained and renewed on a timely basis and used correctly as trademarks, subject to the rights of third parties to attempt to cancel a trademark if priority is claimed or there is confusion of usage. We rely on common law trademark rights to protect our unregistered trademarks. Common law trademark rights generally are limited to the geographic area in which the trademark is actually used, while a United States federal registration of a trademark enables the registrant to stop the unauthorized use of the trademark by any third party anywhere in the United States. Furthermore, the protection available, if any, in foreign jurisdictions may not be as extensive as the protection available to us in the United States.

Although we seek to ensure that we do not infringe on the intellectual property rights of others, there can be no assurance that third parties will not assert intellectual property infringement claims against us.

## **Competition**

The sports nutrition business is highly competitive. Competition is based primarily on quality and assortment of products, marketing support, and availability of new products. Currently, our main competitors are three private companies: Optimum Nutrition, Inc. (“Optimum”), Iovate Health Sciences, Inc. (“IHS”), and Bio-Engineered Supplements and Nutrition, Inc. (“BSN”). Optimum is a wholly owned subsidiary of Glanbia Nutritionals, Inc., an international nutritional ingredients group. Optimum owns and operates two brands of nutritional supplements (Optimum Nutrition and American Body Building), providing a line of products across multiple categories. IHS is a nutritional supplement company that delivers a range of products to the nutritional marketplace. Headquartered in Oakville, Ontario, Canada, IHS’s line of products can be found in major retail stores and include such brands as Hydroxy-Cut™, Cell-Tech™, Six Star Nutrition™. BSN is also a sports nutrition leader whose top products include No-Explode™ and Syntha Six Protein™.

MusclePharm intends to compete by aggressively marketing our brand, emphasizing our relationships with professional athletes, and maximizing our relationships with those athletes, retail outlets and industry publications that align with our vision. We also tout the strength of the science behind MusclePharm products, as this is a key point of difference.

## Regulatory Matters

The manufacture, packaging, labeling, advertising, promotion, distribution and sale of our products are subject to regulation by numerous governmental agencies. Our products are subject to regulation by, among other regulatory entities, the Consumer Product Safety Commission (CPSC), the U.S. Department of Agriculture (USDA), the Environmental Protection Agency (EPA) and the U.S. Food and Drug Administration (FDA). Advertising and other forms of promotion and methods of marketing are subject to regulation primarily by the U.S. Federal Trade Commission (FTC), which regulates these activities under the Federal Trade Commission Act (FTCA). The manufacture, labeling and advertising of our products are also regulated by various state and local agencies as well as those of each foreign country to which we distribute our products.

The Dietary Supplement Health and Education Act of 1994 (DSHEA) revised the provisions of the Federal Food, Drug, and Cosmetic Act (FFDC Act) concerning the regulation of dietary supplements. All of the products we market are regulated as dietary supplements under the FFDC Act.

Under the current provisions of the FFDC Act, there are four categories of claims that pertain to the regulation of dietary supplements. Health claims are claims that describe the relationship between a nutrient or dietary ingredient and a disease or health related condition and can be made on the labeling of dietary supplements if supported by significant scientific agreement and authorized by the FDA in advance via notice and comment rulemaking. Nutrient content claims describe the nutritional value of the product and may be made if defined by the FDA through notice and comment rulemaking and if one serving of the product meets the definition. Statements of nutritional support or product performance, which are permitted on labeling of dietary supplements without FDA pre-approval, are defined to include statements that: (i) claim a benefit related to a classical nutrient deficiency disease and disclose the prevalence of such disease in the United States; (ii) describe the role of a nutrient or dietary ingredient intended to affect the structure or function in humans; (iii) characterize the documented mechanism by which a dietary ingredient acts to maintain such structure or function; or (iv) describe general well-being from consumption of a nutrient or dietary ingredient. In order to make a nutritional support claim, the marketer must possess adequate substantiation to demonstrate that the claim is not false or misleading and if the claim is for a dietary ingredient that does not provide traditional nutritional value, prominent disclosure of the lack of FDA review of the relevant statement and notification to the FDA of the claim is required. Drug claims are representations that a product is intended to diagnose, mitigate, treat, cure or prevent a disease. Drug claims are prohibited from use in the labeling of dietary supplements.

Claims made for our dietary supplement products may include statements of nutritional support and health and nutrient content claims when authorized by the FDA or otherwise allowed by law. The FDA's interpretation of what constitutes an acceptable statement of nutritional support may change in the future, thereby requiring that we revise our labeling. In addition, a dietary supplement that contains a new dietary ingredient (i.e., one not on the market before October 15, 1994) must have a history of use or other evidence of safety establishing that it is reasonably expected to be safe. The manufacturer must notify the FDA at least 75 days before marketing products containing new dietary ingredients and provide the FDA the information upon which the manufacturer based its conclusion that the product has a reasonable expectation of safety. There is no assurance that the FDA will accept the evidence of safety

for any new dietary ingredients that we may wish to market, and the FDA's refusal to accept that evidence could prevent the marketing of the new dietary ingredients and dietary supplements containing a new dietary ingredient.

Our dietary supplements must comply with the Dietary Supplement and Nonprescription Drug Consumer Protection Act, which became effective on December 22, 2007. This Act amends the FFDC Act to mandate the reporting of serious adverse events received by us to the FDA.

The FDA has also announced its intention to promulgate new GMPs specific to dietary supplements, to fully enforce DSHEA and monitor compliance with the Bioterrorism Act of 2002.

Our failure to comply with applicable FDA regulatory requirements could result in, among other things, injunctions, product withdrawals, recalls, product seizures, fines and criminal prosecutions. We intend to comply with the new GMPs once they are adopted. The new GMPs, predicted to be finalized shortly, would be more detailed and stringent than the GMPs that currently apply to dietary supplements and may, among other things, require dietary supplements to be prepared, packaged, produced and held in compliance with regulations similar to the GMP regulations for drugs. There can be no assurance that, if the FDA adopts GMP regulations for dietary supplements, we will be able to comply with the new regulations without incurring a substantial expense.

As a result of our efforts to comply with applicable statutes and regulations in the United States and elsewhere, we have from time to time reformulated, eliminated or relabeled certain of our products and revised certain advertising claims. We cannot predict the nature of any future laws, regulations, interpretations or applications, nor can we determine what effect additional governmental regulations or administrative orders, when and if promulgated, would have on our business in the future. They could, however, require the reformulation of certain products to meet new standards, the recall or discontinuance of certain products not capable of reformulation, additional record keeping, expanded documentation of the properties of certain products, expanded or different labeling, and/or scientific substantiation. Any or all of such requirements could have a material adverse effect on our business, financial condition and results of operations.

Our advertising of dietary supplement products is subject to regulation by the FTC under the FTCA. Section 5 of the FTCA prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Section 12 of the FTCA provides that the dissemination or the causing to be disseminated of any false advertisement pertaining to drugs or foods, which would include dietary supplements, is an unfair or deceptive act or practice. Under the FTC's Substantiation Doctrine, an advertiser is required to have a "reasonable basis" for all objective product claims before the claims are made. Failure to adequately substantiate claims may be considered either deceptive or unfair practices. Pursuant to this FTC requirement, we are required to have adequate substantiation for all material advertising claims made for our products.

On November 18, 1998, the FTC issued "Dietary Supplements: An Advertising Guide for Industry." This guide provides marketers of dietary supplements with guidelines on applying FTC law to dietary supplement advertising. It includes examples of the principles that should be used when interpreting and substantiating dietary supplement advertising. Although the guide provides additional explanation, it does not substantively change the FTC's existing policy that all supplement marketers have an obligation to ensure that claims are presented truthfully and to verify the adequacy of the support behind such claims. Our outside counsel reviews our advertising claims for compliance with FTC requirements.

The FTC has a variety of processes and remedies available to it for enforcement, both administratively and judicially, including compulsory process, cease and desist orders and injunctions. FTC enforcement can result in orders requiring, among other things, limits on advertising, corrective advertising, consumer redress, divestiture of assets, rescission of contracts and such other relief as may be deemed necessary. A violation of such orders could have a material adverse effect on our business, financial condition and results of operations.

Advertising and labeling for dietary supplements and conventional foods are also regulated by state, county and other local governmental authorities. Some states also permit these laws to be enforced by private attorney generals. These private attorney generals may seek relief for consumers, seek class action certifications, seek class-wide damages, seek class-wide refunds and product recalls of products sold by us. There can be no assurance that state and local authorities will not commence regulatory action, which could restrict the permissible scope of our product advertising claims, or products that can be sold in the future.

Governmental regulations in foreign countries where we plan to or expand sales may prevent or delay entry into the market or prevent or delay the introduction, or require the reformulation, of certain of our products. Compliance with such foreign governmental regulations is generally the responsibility of our distributors for those countries. These distributors are independent contractors over whom we have limited control.

*Number of Total Employees and Number of Full Time Employees*

We believe that our success will depend greatly on our ability to identify, attract, and retain capable employees. As of April 13, 2012, we had 24 full time employees. Our employees are not represented by any collective bargaining unit, and we believe our relations with our employees are good. We have recently completed staffing for the in-house medical and physiology center on-site in our work-out, fight training and training facilities.

**Item 1A. Risk Factors.**

**Risks Related to Our Business and Industry**

***OUR INDEPENDENT AUDITORS HAVE EXPRESSED SUBSTANTIAL DOUBT ABOUT OUR ABILITY TO CONTINUE AS A GOING CONCERN, WHICH MAY HINDER OUR ABILITY TO CONTINUE AS A GOING CONCERN AND OUR ABILITY TO OBTAIN FUTURE FINANCING.***

As reflected in the accompanying restated financial statements, the Company had a net loss of \$23,280,950 and net cash used in operations of \$5,801,761 for the year ended December 31, 2011, and a working capital deficit and stockholders' deficit of \$13,693,267 and \$12,971,212, respectively, at December 31, 2011. These factors raise substantial doubt about the Company's ability to continue as a going concern.

The ability of the Company to continue its operations is dependent on management's plans, which include the raising of capital through debt and/or equity markets with some additional funding from other traditional financing sources, including term notes, until such time that funds provided by operations are sufficient to fund working capital requirements. The Company may need to incur liabilities with certain related parties to sustain the Company's existence.

The Company will require additional funding to finance the growth of its current and expected future operations as well as to achieve its strategic objectives. The Company believes its current available cash along with anticipated revenues may be insufficient to meet its cash needs for the near future. There can be no assurance that financing will be available in amounts or terms acceptable to the Company, if at all.

In response to these problems, management has taken the following actions:

- seeking additional third party debt and/or equity financing;
- execute a plan to recapitalize the company;
- continue with the implementation of the business plan;



generate new sales from international customers; and

allocate sufficient resources to continue with advertising and marketing efforts.

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

***WE WILL NEED TO RAISE ADDITIONAL CAPITAL TO CARRY OUT OUR BUSINESS PLAN.***

We will need to raise additional capital to fund the growth of our business. There is no guarantee that we will be able to access additional capital at rates and on terms which are attractive to us, if at all. Without the additional funding needed to fund our growth we may not be able to grow as planned.

***OUR FAILURE TO APPROPRIATELY RESPOND TO COMPETITIVE CHALLENGES, CHANGING CONSUMER PREFERENCES AND DEMAND FOR NEW PRODUCTS COULD SIGNIFICANTLY HARM OUR CUSTOMER RELATIONSHIPS AND PRODUCT SALES.***

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

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

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

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

***OUR INDUSTRY IS HIGHLY COMPETITIVE, AND OUR FAILURE TO COMPETE EFFECTIVELY COULD ADVERSELY AFFECT OUR MARKET SHARE, FINANCIAL CONDITION AND FUTURE GROWTH.***

The sports supplement industry is highly competitive with respect to:

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

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

***WE RELY ON A LIMITED NUMBER OF CUSTOMERS FOR A SUBSTANTIAL PORTION OF OUR SALES, AND THE LOSS OF OR MATERIAL REDUCTION IN PURCHASE VOLUME BY ANY OF THESE CUSTOMERS WOULD ADVERSELY AFFECT OUR SALES AND OPERATING RESULTS.***

In 2011, two customers accounted for approximately 55% of net sales. Our largest customer in 2011 represented 41% of our sales. In 2010, three customers accounted for approximately 67% of our sales. The largest customer in 2010 accounted for 45% of our sales. The loss of any of our major customers, a significant reduction in purchases by any major customer, or, any serious financial difficulty of a major customer, could have a material adverse effect on our sales and results of operations.

Customer	2011	2010
A	41 %	45 %
B	14 %	7 %
C	- %	15 %

***ADVERSE PUBLICITY OR CONSUMER PERCEPTION OF OUR PRODUCTS AND ANY SIMILAR PRODUCTS DISTRIBUTED BY OTHERS COULD HARM OUR REPUTATION AND ADVERSELY AFFECT OUR SALES AND REVENUES.***

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