

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9904 / September 8, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75852 / September 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16789

In the Matter of

Brad J. Pyatt,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Brad J. Pyatt (“Pyatt” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

Pyatt served as the chief executive officer ("CEO") of the MusclePharm Corporation ("MSLP") since it became a public company in 2010. MSLP is a Denver-based sports nutrition company that develops, manufactures, and markets sports nutrition products. When MSLP became a public company, it was unprepared for the Commission's reporting requirements and lacked sufficient infrastructure to support its rapid growth. MSLP's revenues greatly increased each year (MSLP's reported revenue was \$3M in 2010, \$17M in 2011, \$67M in 2012 and \$111M in 2013). Pyatt lacked public company or accounting experience and failed to hire executives with the required expertise. While Pyatt focused on revenue growth, he failed to ensure sufficient internal controls were enacted and proper books and records were kept. As a result, between 2010 and 2013, MSLP had a series of accounting and disclosure failures that resulted in the company filing materially false and misleading filings with the Commission from 2010 through July 2014. Specifically, as described further below, MSLP failed to disclose perquisite compensation to its executive officers, failed to disclose related party transactions, failed to disclose Pyatt's bankruptcy, and failed to properly disclose rent expense in the financial statements in Commission filings that Pyatt reviewed, approved, and signed. Additionally, MSLP and Pyatt engaged in the unregistered offer and sale of its securities.

Respondent

1. Brad J. Pyatt, age 34, is the current chairman of the board and CEO of MSLP. Pyatt co-founded MSLP in 2008.

Relevant Entity

2. MSLP is a Nevada corporation, based in Denver, Colorado, that manufactures and markets sports nutrition products. From 2010 to present, MSLP's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was quoted on the OTC Bulletin Board.

MSLP's Failure to Disclose Perquisites from 2010 through July 2014

3. From 2010 through July 2014, MSLP significantly understated its disclosed perquisites by approximately \$482,000 or 76% in Forms 10-K, Forms S-1, and proxy statements filed with the Commission that were reviewed, approved, and signed by Pyatt. MSLP understated

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

its disclosed perquisites in (1) 2010 by approximately \$37,000 or 100%; (2) in 2011 by approximately \$160,000 or 100%; (3) in 2012 by approximately \$214,000 or 93%; and (4) in 2013 by approximately \$71,000 or 35%.

4. Pyatt knew or should have known that executive compensation was required to be disclosed in Commission filings and failed to educate himself regarding the required reporting of executive compensation in the Commission filings or what were considered perquisites with respect to executive officers, despite being involved in approving expense reports. As a consequence, MSLP did not disclose any perquisites in its filings with the Commission prior to October 2012.

5. From 2010 through 2013, Pyatt received approximately \$244,000 of undisclosed perquisites. The perquisites included perquisites related to meals, autos, apparel, personal professional tax and legal services, and two golf club memberships. Pyatt made material omissions and misrepresentations to the auditors about his receipt of perquisites. During this time, Pyatt also approved MSLP's payment for perquisites of other executives that were not disclosed, including items such as the medical costs of the birth of a child, eye surgery, and personal golf club memberships.

6. In September 2012, at a meeting attended by Pyatt, who was also chairman of the board of directors, the MSLP board of directors determined perquisites related to autos, golf club memberships, and private plane usage would be disclosed in Commission filings. MSLP, however, filed several Commission filings through July 2014, reviewed, approved, and signed by Pyatt, which failed to include complete disclosure of the perquisites identified at the board meeting and otherwise known by Pyatt.

7. In January 2013, Pyatt distributed a letter to the MSLP executives specifically instructing that there would be "no more payment of personal items" and requiring that all reimbursed expenses must be supported by receipt. Executives, however, including Pyatt, continued to submit reimbursement forms and make charges on company credit cards for personal items without providing original receipts. MSLP continued paying for these items without properly identifying them as perquisites.

8. By summer 2013, MSLP was conducting an internal review to determine the amount of undisclosed perquisites paid by MSLP to its executives since 2010. By July 2013, at least \$100,000 of undisclosed perquisites had been identified. This review was discussed at an August board meeting attended by Pyatt. Despite not having completed its perquisite review, MSLP filed a Form S-1, reviewed, approved, and signed by Pyatt, in August 2013 with incorrect perquisite disclosures that were identical to amounts previously disclosed before the internal review began.

9. MSLP continued its internal investigation of undisclosed perquisites from fall 2013 through spring 2014. On March 31, 2014, MSLP filed its 2013 Form 10-K, which was reviewed, approved, and signed by Pyatt. In the summary compensation table, MSLP set forth previously undisclosed perquisites for 2011 and 2012 totaling approximately \$189,000 (previously

undisclosed perquisites of \$74,000 for 2011 and \$115,000 for 2012). The table also disclosed approximately \$134,000 of perquisites in 2013. These disclosures, however, still significantly understated perquisites paid to MSLP executives, including perquisites received by Pyatt.

10. MSLP reexamined its perquisite investigation results from spring 2014 through fall 2014. On October 31, 2014, MSLP filed amended Forms 10-K for the years ended 2012 and 2013, which were reviewed, approved, and signed by Pyatt. The 2013 Form 10-K/A disclosed an additional \$252,000 of undisclosed perquisites that were not included in the 2013 Form 10-K or its July 2014 proxy statement. The 2012 Form 10-K/A disclosed an additional \$37,000 of perquisites for 2010. In total, MSLP failed to report perquisites totaling approximately \$482,000 from 2010-2013.

MSLP's Failure to Disclose Related Party Transactions with a Major Customer from 2011 through 2012

11. As CEO and chairman of the board of directors, Pyatt was responsible for reviewing related party transactions at MSLP. Pyatt knew or should have known that policies regarding identifying and disclosing related party transactions were required and Pyatt failed to identify or implement sufficient policies regarding identifying and disclosing related party transactions. As a result, from May 2011 through 2012, MSLP failed to disclose significant related party transactions with a major customer in Commission filings that were reviewed, approved, and signed by Pyatt.

12. In May 2011, MSLP hired a new chief marketing officer ("CMO"). The CMO was a former executive and co-founder of a major customer of MSLP. Pyatt knew that the CMO's brother remained the CEO of the major customer. The CMO's brother was also a greater than 10% owner of the major customer. From May 2011 to April 2012, Pyatt did not identify the related party relationship or consider if disclosure was necessary.

13. In March 2012, MSLP's auditor informed MSLP that transactions with the major customer were related party transactions requiring disclosure. In April 2012, MSLP provided a memo to its auditors concluding that transactions with the major customer did not require disclosure under generally accepted accounting principles "GAAP." Pyatt reviewed, edited, and signed the memo. The memo contained inaccurate information about the relationship between MSLP, the CMO, and the major customer. Pyatt did not consider whether transactions with the major customer needed to be disclosed as related party transactions under Item 404 of Regulation S-K. The 2011 Form 10-K was filed three days after the memo, without any related party disclosure regarding the major customer.

14. In July 2012, MSLP hired a new CFO. Pyatt was aware that the CFO had previously been CFO of MSLP's major customer (where the CMO's brother was CEO) and acquired a 1.75% indirect interest in the major customer. The CFO also continued to perform work for the CEO of the major customer personally at no charge while he worked at MSLP.

15. In August 2012, MSLP's auditor requested that MSLP update the April 2012 memo to address whether the major customer was a related party requiring disclosure under GAAP, specifically due to the CMO's or CFO's employment. The August memo concluded that transactions with the major customer did not require disclosure under GAAP. Pyatt reviewed, edited, and signed the memo. The memo contained inaccurate information about the relationship between MSLP, the CMO, the CFO, and the major customer. As a result, MSLP failed to disclose transactions with its major customer as related party transactions in Commission filings that were reviewed, approved, and signed by Pyatt, until it filed its Form 10-Q for the quarter ended March 30, 2013 in May 2013.

Pyatt's Failure to Disclose his Personal Bankruptcy from 2011-2012

16. Pyatt filed for personal bankruptcy in 2008 in the United States District Court for the District of Colorado. From April 2011 through July 2012, MSLP's Commission filings, which Pyatt, reviewed, approved, and signed, did not include disclosure of Pyatt's bankruptcy. From April 2011 through October 2012, MSLP's Commission filings, which Pyatt, reviewed, approved, and signed, included a misstatement that "[n]one of the members of the board of directors or other executives has been involved in any bankruptcy proceedings." Pyatt did not correct the misstatement or omission in the Commission filings. Pyatt also misrepresented to the auditors that he had not filed for bankruptcy.

Other Financial Statement, Accounting, and Disclosure Failures from 2010-2013

17. MSLP failed to disclose \$100,000 of rent expense related to an August 2012 aircraft lease agreement in its 2012 Commission filings as required under GAAP. As a result, MSLP understated its disclosed rent expense by 23%. Pyatt, who negotiated and signed the August 2012 contract, failed to provide the contract to the CFO.

Stock Issuances without a Registration Statement

18. In 2011, MSLP lacked funds to pay approximately \$1.1 million of outstanding invoices to vendors dating back to services and products purchased in 2009 and 2010. To pay off the vendors, MSLP entered into numerous agreements, negotiated and signed by Pyatt, with third-parties who were willing to pay MSLP's vendors in cash in exchange for shares of MSLP stock that the third-parties immediately sold into the market after counsel representing MSLP opined to the transfer agent that the shares could be issued without a restrictive legend. No registration statement was filed with the Commission for these transactions and no exemption from registration was available.

Books, Records, and Lack of Internal Controls

19. Because MSLP improperly recorded and/or reported its perquisites, related parties, and leases, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

20. In addition, MSLP failed to implement internal accounting controls relating to its perquisites, related parties, and leases, which were sufficient to provide reasonable assurances that transactions were recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

Violations

21. As a result of the conduct described above, Pyatt violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and caused MSLP's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, which make it unlawful for any person in the offer or sale of any securities by the use of interstate commerce to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

22. As a result of the conduct described above, Pyatt violated Sections 5(a) and 5(c) of the Securities Act, which prohibits directly or indirectly offering to sell, selling, and delivering after sale to the public, or offering to sell or to buy through the use or medium of any prospectus or otherwise, certain securities, as to which no registration statement was or is in effect or on file with the Commission, and for which no exemption was or is available.

23. As a result of the conduct described above, Pyatt violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which prohibits solicitations by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing a statement which, at the time and in the light of the circumstances under which it was made, was false or misleading with respect to any material fact, or which omitted to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

24. As a result of the conduct described above, Pyatt caused MSLP's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

25. As a result of the conduct described above, Pyatt caused MSLP's violations of Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records and accounts, which in reasonable detail, accurately and fairly reflect their transactions and dispositions of assets.

26. As a result of the conduct described above, Pyatt caused MSLP's violations of Section 13(b)(2)(B) of the Exchange Act and violated Rule 13b2-1 thereunder, which require all

reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets; and prohibit persons from directly or indirectly falsifying or causing to be falsified any book, record, or account.

27. Lastly, as a result of the conduct described above, Pyatt violated Exchange Act Rule 13b2-2, which prohibits any director or officer of an issuer from, directly or indirectly: (a) making or causing to be made a materially false or misleading statement; or (b) omitting or causing another person to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with financial statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Pyatt's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Pyatt cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), 17(a)(2), and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, 13b2-1, 13b2-2, and 14a-9 thereunder.

B. Respondent shall pay civil penalties of \$150,000 to the Commission. Payment shall be made in the following installments:

- a. \$37,500.00 within 10 days of the entry of this Order;
- b. \$37,500.00 within 120 days of the entry of this Order;
- c. \$37,500.00 within 240 days of the entry of this Order;
- d. \$37,500.00 plus interest on the payments described in Section IV.B(a)-(d) pursuant to 31 U.S.C. 3717 within 365 days of the entry of this Order.

Prior to making the payment described in Section IV.B(d), Pyatt shall contact the Commission staff to ensure the inclusion of interest. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, at the discretion of the Commission staff, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Brad J. Pyatt as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas J. Krysa, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary