

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9905 / September 8, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75853 / September 8, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3685 / September 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16790

In the Matter of

Lawrence S. Meer, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
4C AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND RULE
102(e) OF THE COMMISSION'S RULES
OF PRACTICE, MAKING FINDINGS,
AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against, Lawrence S. Meer, CPA (“Respondent” or “Meer”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications

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, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

Summary

Meer served as the chief financial officer (“CFO”) of the MusclePharm Corporation (“MSLP”) from July 1, 2010 through July 2, 2012. MSLP is a Denver-based sports nutrition company that develops, manufactures, and markets sports nutrition products. When MSLP became a public company in 2010, Meer was unprepared for the Commission’s reporting requirements and failed to develop 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, and \$67M in 2012). Meer lacked public company experience and failed to educate himself with the required expertise. Meer failed to ensure sufficient internal controls were enacted and proper books and records were kept. As a result, between 2010 and July 2012, when Meer ceased being

to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

CFO, MSLP had a series of accounting and disclosure failures that resulted in the company filing materially false and misleading filings with the Commission. Specifically, as described further below, MSLP failed to disclose perquisite compensation to its executive officers, failed to disclose related party transactions, failed to disclose bankruptcies related to Meer's companies, and committed other financial statement, accounting, and disclosure failures.

Respondent

1. Lawrence S. Meer, CPA, age 54, was the CFO of MSLP from July 1, 2010 through July 2, 2012. From October 2009 until July 1, 2010, Meer was the Director of Finance of MSLP. Meer then served as treasurer of MSLP from July 2, 2012 through March 1, 2013. Meer was licensed as a CPA in Colorado from approximately 1987 to 2002, when his license lapsed.

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 2012

3. From 2010 through 2012, MSLP materially understated its disclosed perquisites by approximately \$411,000 or 96% in Forms 10-K, Forms S-1, and proxy statements filed with the Commission. Meer reviewed, approved, and signed Forms 10-K and Forms S-1 while CFO. MSLP understated its disclosed perquisites in (1) 2010 by approximately \$37,000 or 100%; (2) in 2011 by approximately \$160,000 or 100%; and (3) in 2012 by approximately \$214,000 or 93%.

4. From 2010 until July 2012, Meer reviewed expense reimbursements and charges coming through the accounting department. Meer knew or should have known that executive compensation was required to be disclosed in Commission filings and Meer failed to educate himself regarding the required reporting of executive compensation in Commission filings or what were considered perquisites with respect to executive officers. Meer failed to ensure sufficient internal controls were enacted relating to perquisites and proper books and records were kept. Meer did not identify any potential perquisites. As a consequence, MSLP did not disclose any perquisites in its filings with the Commission while Meer was CFO.

5. From 2010 through 2012, MSLP's chief executive officer ("CEO") received approximately \$198,000 of undisclosed perquisites. The perquisites included perquisites related to meals, autos, apparel, personal professional tax and legal services, and two golf club memberships. During this time, MSLP also paid 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. Additionally, Meer received approximately \$22,000 in perquisites from MSLP, which Meer also failed to record as additional compensation in the form of perquisites. Meer also made material omissions and misrepresentations to the auditors about receipt of perquisites.

6. After Meer was no longer working for MSLP, on October 31, 2014, MSLP filed amended Forms 10-K for the years ended 2012 and 2013. In total, MSLP failed to report perquisites totaling approximately \$411,000 from 2010-2012.

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

7. Meer knew or should have known that policies regarding identifying and disclosing related party transactions were required and Meer failed to identify or implement sufficient policies regarding identifying and disclosing related party transactions. As a result, from May 2011 through July 2, 2012, while Meer was CFO, MSLP failed to disclose material related party transactions with a major customer in Commission filings that were reviewed, approved, and signed by Meer.

8. 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. Meer 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, Meer did not identify the related party relationship or consider if disclosure was necessary.

9. 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." Meer reviewed and signed the memo. The memo misapplied GAAP, which Meer, the only accountant signing the memo, did not correct. The memo also contained inaccurate information about the relationship between MSLP, the CMO, and the major customer that Meer did not correct. Meer 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 was reviewed, approved, and signed by Meer, without any related party disclosure regarding the major customer.

10. MSLP continued to fail to disclose transactions with its major customer as related party transactions in Commission filings, until it filed its Form 10-Q for the quarter ended March 30, 2013 in May 2013.

Meer's Failure to Disclose the Bankruptcies of his Former Companies from 2010-2012

11. Two companies owned by Meer filed for bankruptcy in 2008 in the United States District Court for the Southern District of Florida. MSLP never disclosed the bankruptcies of Meer's former companies in Commission filings. From April 2011 through October 2012, MSLP's filings also included a misstatement that "[n]one of the members of the board of directors or other executives has been involved in any bankruptcy proceedings." Meer did not correct the misstatement or omissions in the Commission filings that he reviewed, approved, and signed. Meer also omitted to inform the auditors that his companies had filed for bankruptcy.

Other Financial Statement, Accounting, and Disclosure Failures from 2010-2012

12. MSLP improperly accounted for advertising and promotional related costs for 2010 and 2011. Instead of accounting for advertising and promotional related costs as a reduction of revenue as required under GAAP, MSLP recorded these costs as advertising expenses resulting in it overstating revenue by \$845,000 or 26% in 2010 and \$3.6 million or 21% in 2011. As a result, MSLP filed an amended Form 10-K for the year ended December 31, 2011 on July 2, 2012 restating its 2010 and 2011 financial statements. Meer did not read the applicable GAAP and did not evaluate the accounting for the various sales incentives MSLP offered. This issue was first raised by MSLP's auditor in mid-2012.

13. MSLP recorded approximately \$1.5 million of loss on settlement of accounts payable in the first quarter of 2011, when GAAP required it be disclosed in 2010. By reporting the loss in the wrong quarter, MSLP understated its 2010 loss on settlement of accounts payable as presented on its income statement by 78% and overstated it by 455% in the first quarter of 2011. MSLP's net loss was understated 8% in 2010 and overstated 42% in 2011. Meer was aware of MSLP's past due accounts payable and the eventual settlement in early 2011 using MSLP stock. Meer, however, failed to consider whether the settlements should have been booked in the prior accounting period.

14. MSLP failed to disclose continuing sponsorship commitments in its Form 10-K for the year ended December 31, 2011 and its Forms S-1 filed during 2012 as required under GAAP. The future sponsorship commitments required MSLP to make future payments totaling \$6.9 million through 2013. Meer failed to consider whether the scheduled future payments needed to be disclosed.

15. MSLP failed to disclose that it had one supplier that accounted for nearly 100% of its product purchases in its 2011 and 2012 Commission filings as required under GAAP. Meer did not identify that this was required to be disclosed.

16. MSLP failed to disclose the amount of its international sales in its 2011 through 2012 Commission filings as required under GAAP. MSLP's international sales accounted for 23% for 2011 and 30% for 2012. Meer did not identify that this was required to be disclosed.

Books, Records, and Lack of Internal Controls

17. Because MSLP improperly recorded and/or reported its perquisites, related parties, revenue, losses on settlement of accounts payable, sponsorship commitments, manufacturing concentration, and international sales, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

18. In addition, MSLP failed to implement internal accounting controls relating to its perquisites, related parties, revenue, losses on settlement, sponsorship commitments, manufacturing concentration, and international sales, 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

19. As a result of the conduct described above, Meer willfully⁴ violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and was a cause of 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.

20. As a result of the conduct described above, Meer was a cause of MSLP's violations of 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.

21. As a result of the conduct described above, Meer was a cause of 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.

22. As a result of the conduct described above, Meer was a cause of 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.

23. As a result of the conduct described above, Meer was a cause of MSLP's violations of Section 13(b)(2)(B) of the Exchange Act and willfully violated Rule 13b2-1 thereunder, which

⁴ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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.

24. As a result of the conduct described above, Meer willfully 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.

Disgorgement and Civil Penalties

Respondent has submitted a sworn Statement of Financial Condition dated February 4, 2015 and other evidence and has asserted his inability to pay a civil penalty.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

- A. Meer shall cease and desist from committing or causing any violations and any future violations of Sections 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 promulgated thereunder.
- B. Meer is denied the privilege of appearing or practicing before the Commission as an accountant.
- C. After three years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:
 1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company

for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:
 - (a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board (“Board”) in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent’s or the firm’s quality control system that would indicate that the respondent will not receive appropriate supervision;
 - (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
 - (d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission’s review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent’s character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

E. Based upon Respondent’s sworn representations in his Statement of Financial Condition dated February 4, 2015 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

F. The Division of Enforcement (“Division”) may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent

provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary