

SEC Announces Charges Against Florida-based Audit Firm and its Owner Accused of Violating Auditor Independence Rules and Committing Audit Failures (3-17180)

The Securities and Exchange Commission today announced charges against Florida-based audit firm Berman & Company, P.A., and its sole owner Elliot R. Berman, CPA, alleging violations of auditor independence rules and multiple audit failures relating to Berman & Co.'s 2010 and 2011 year-end audits of MusclePharm Corporation.

The SEC's Enforcement Division and Office of the Chief Accountant allege that, during Berman & Co.'s 2010 and 2011 year end audits of MusclePharm, Berman & Co. and Berman:

- Audited MusclePharm's financial statements and issued audit reports while Berman & Co. was not independent because of indemnification provisions in Berman & Co.'s engagement letters; and
- Failed to recognize that MusclePharm improperly accounted for sales incentives, advertising, and promotions, and inappropriately relied on management representations as sufficient audit evidence.

The SEC's Enforcement Division and Office of the Chief Accountant further allege that during Berman & Co.'s 2011 year-end audit of MusclePharm, Berman & Co. and Berman:

- Ignored audit evidence demonstrating that MusclePharm's largest customer in 2011 was a related party requiring disclosure and inappropriately relied on management representations; and
- Failed to recognize that MusclePharm did not disclose its sponsorship commitments and international sales as required.

The matter will be scheduled for a public hearing before an administrative law judge, who will prepare an initial decision stating what, if any, remedial actions are appropriate.

The SEC's investigation was conducted by Kimberly L. Frederick, Michael F. D'Angelo, and Mary S. Brady. The case is being supervised by Thomas J. Krysa and litigation assistance is being provided by Mark L. Williams and Gregory Kasper.

See: [Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102\(e\) of the Commission's Rules of Practice](#)