
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

May 28, 2014
Date of Report (Date of earliest event reported)

NUVILEX, INC.
(Exact Name of Registrant as Specified in its Charter)

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| <u>Nevada</u> (State or other jurisdiction of incorporation) | <u>333-68008</u> (Commission File Number) | <u>62-1772151</u> (I.R.S. Employer Identification No.) |
| 12510 Prosperity Drive, Suite 310 Silver Spring, Maryland (Address of Principal Executive Offices) | | 20904-1643 (Zip Code) |

Registrant's telephone number, including area code: **(917) 595-2850**

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
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act
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Item 1.01 Entry into a Material Definitive Agreement.

On May 28, 2014, Nuvilex, Inc., a Nevada corporation (“Company”), entered into a financial advisory, offering and at the market offering engagement agreement (“Chardan Agreement”), with Chardan Capital Markets, LLC (“Chardan”) pursuant to which Chardan has agreed to use its reasonable best efforts to act as the Company’s sales agent in connection with the sale of the Company’s common stock, \$.0001 par value per share (“Common Stock”), in “at the market” or privately negotiated transactions of up to \$50,000,000, depending upon market conditions and at the discretion of the Company. In connection with such transactions, the Company has agreed to pay Chardan: (i) a cash fee of 3% of the gross proceeds from the sale of any shares of Common Stock sold in an “at-the-market” offering and (ii) a cash fee of 7% of the aggregate sales price of any distinct blocks of Common Stock sold under the Chardan Agreement, plus five-year warrants representing 5% of the number of shares of Common Stock sold. In addition, the Company has agreed to reimburse certain expenses of Chardan in an amount not to exceed \$15,000.

Item 1.02 Termination of a Material Definitive Agreement.

On February 14, 2014, the Company entered into a purchase agreement (“Purchase Agreement”) and a registration rights agreement (“Registration Rights Agreement”) with Lincoln Park Capital Fund, LLC (“Lincoln Park”) pursuant to which Lincoln Park purchased \$2,000,000 of our Common Stock and the Company had the right to sell to Lincoln Park up to \$25,000,000 in shares of its Common Stock, subject to certain limitations.

On May 28, 2014, the Company and Lincoln Park entered into a Mutual Termination and Release Agreement (“Termination Agreement”) terminating the Purchase Agreement *provided* that: (i) the representations and warranties of Lincoln Park and the Company contained in the Purchase Agreement; (ii) the covenants regarding “Variable Rate Transactions” (as defined in the Purchase Agreement) contained in the Purchase Agreement (“Variable Rate Covenants”); (iii) the indemnification provisions set forth in Section 9 of the Purchase Agreement; (iv) the agreements and covenants set forth in the Purchase Agreement regarding notice, governing law and certain other related administrative provisions; and (v) the obligations of the Company to register for resale all 14,125,000 shares of Common Stock currently owned by Lincoln Park each survive such termination and continue in full force and effect indefinitely, and *provided* further that the Variable Rate Covenants will terminate upon the earlier of the one year anniversary of the effectiveness of the registration referred to in the preceding clause (v) (“Effective Date”) and the date on which Lincoln Park has sold all of its shares of Common Stock. Pursuant to the Termination Agreement, Lincoln Park has consented to the entry into of the Chardan Agreement, so long there are no provisions within the Chardan Agreement that in any manner, directly or indirectly, limit Lincoln Park’s ability to carry out or effect the sale of shares of Common Stock pursuant to a registration statement or otherwise, or in any manner, directly or indirectly, conflict with the surviving obligations under the Termination Agreement and the Company and Chardan execute the Chardan Agreement within three (3) calendar days from the Effective Date and the Company files a Current Report on Form 8-K to report such transaction within four (4) business days of the Chardan Agreement’s execution date. The Company has issued 1,062,500 shares of its Common Stock to Lincoln Park in connection with it consenting to this transaction.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 4.1 Mutual Termination and Release Agreement, dated as of May 28, 2014, by and between Nuvilex, Inc. and Lincoln Park Capital Fund, LLC.
- 10.1 Financial Advisory, Offering and At the Market Offering Engagement Letter between Nuvilex, Inc. and Chardan Capital Markets, LLC dated May 28, 2014.
- 99.1 Press Release dated May 29, 2014.

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.

Dated May 29, 2014

NUVILEX, INC.

By: /s/ Kenneth L. Waggoner
Kenneth L. Waggoner
Chief Executive Officer

MUTUAL TERMINATION AND RELEASE AGREEMENT

THIS MUTUAL TERMINATION AND RELEASE AGREEMENT (the "Agreement"), is dated as of May 28, 2014 (the "Effective Date"), by and between **NUVILEX, INC.**, a Nevada corporation (the "Company"), and **LINCOLN PARK CAPITAL FUND, LLC**, an Illinois limited liability company (the "Investor").

WHEREAS, the Investor and the Company mutually desire to terminate the Purchase Agreement dated as of February 14, 2014 and amended March 21, 2014, by and between the Company and the Investor (the "Purchase Agreement") whereby the Investor has invested \$2,000,000 in the Company (all capitalized terms used in this Agreement that are not defined in this Agreement shall have the meanings set forth in the Purchase Agreement); and

WHEREAS, in connection with such termination of the Purchase Agreement, the Company desires to issue to the Investor, and the Investor desires to receive from the Company, securities of the Company as more fully described in this Agreement; and

WHEREAS, subsequent to the termination of the Purchase Agreement, the Company desires to enter into that certain placement agent agreement with Chardan Capital Markets, LLC with regard to an "at-the-market" offering (the "Chardan ATM"), and in connection therewith desires to obtain the Investor's consent to enter into the Chardan Agreement and to consummate the transactions contemplated therein, and the Investor desires to grant such consent.

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 the Investor agree as follows:

1. TERMINATION OF THE PURCHASE AGREEMENT.

The Purchase Agreement and the other Transaction Documents between the Investor and the Company related to the Purchase Agreement (other than this Agreement) are hereby terminated effective as of the Effective Date and any and all rights, duties and obligations arising thereunder or in connection with the Purchase Agreement, and the Transaction Documents (other than this Agreement) are now and hereafter fully and finally terminated, provided however that, subject to the last sentence of this Section, (i) the representations and warranties of the Investor and Company contained in Sections 3 and 4 of the Purchase Agreement, (ii) the covenants regarding Variable Rate Transactions contained in Section 5(l) of the Purchase Agreement (the "Variable Rate Covenants"), (iii) the indemnification provisions set forth in Section 9 of the Purchase Agreement, and (iv) the agreements and covenants set forth in Sections 11 and 12 of the Purchase Agreement, each shall survive such termination and shall continue in full force and effect (the "Surviving Obligations"). Further, notwithstanding any contrary terms contained in Section 5(l) of the Purchase Agreement, the Variable Rate Covenants shall continue in full force and effect until the earlier of one year from the Effectiveness Date (as defined below), or until the Investor no longer owns any shares of Common Stock issued to it by the Company, at which time such Variable Rate Covenants shall terminate.

2. MUTUAL GENERAL RELEASE.

Except as may arise under or in connection with this Agreement and the Surviving Obligations, the Company and the Investor hereby release and forever discharge each party hereto and its predecessors, successors and assigns, employees, shareholders, partners, managing members, officers, directors, agents, subsidiaries, divisions and affiliates from any and all claims, causes of actions, suits, demands, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments whatsoever in law or in equity, whether known or unknown, including, but not limited to, any claim arising out of or relating to the transactions described in the Purchase Agreement and Transaction Documents (other than the Surviving Obligations) which any party hereto had, now has or which its heirs, executors, administrators, successors or assigns, or any of them, hereafter can, shall or may have, against any party hereto or such parties predecessors, successors and assigns, employees, shareholders, partners, managing members, officers, directors, agents, subsidiaries, divisions and affiliates, for or by reason of any cause, matter or thing whatsoever, whether arising prior to, on or after the date hereof, provided, however, that (i) this Agreement, and (ii) the Surviving Obligations shall continue in full force and effect as the legal, valid and binding obligation of each party thereto enforceable against each such party in accordance with their respective terms.

3. TERMINATION SHARES AND REGISTRATION OF COMMON STOCK.

(a) Termination Shares. In consideration for the Investor's execution and delivery of this Agreement, the Company shall cause to be issued to the Investor a total of One Million Sixty-Two Thousand Five Hundred (1,062,500) shares of Common Stock (collectively, the "Termination Shares"). Immediately upon the execution of this Agreement, the Company shall cause to be issued to the Investor the Termination Shares and shall deliver to the Transfer Agent irrevocable instructions with respect to the issuance of the Termination Shares in substantially the same form as attached to the Purchase Agreement.

(b) Registration Statement.

(i) The Company shall file with the SEC, within five (5) calendar days from the date on which it has been advised that the SEC has no further comments on its Annual Report on Form 10-K for the year ended April 30, 2013, a new registration statement (the "Registration Statement") covering the shares to be sold in connection with the Chardan ATM and the resale of the Termination Shares and those 13,052,000 shares of Common Stock previously issued by the Company to the Investor via a private placement transaction (such 13,052,000 shares, collectively with the Termination Shares, the "Registrable Shares"). The Investor and its counsel shall have a reasonable opportunity to review and comment upon the Registration Statement and any amendment or supplement to such Registration Statement and any related prospectus prior to its filing with the SEC, and the Company shall give due consideration to all such comments. The Investor shall furnish all information reasonably requested by the Company for inclusion therein. The Company shall use its reasonable best efforts to have the Registration Statement declared effective by the SEC within one hundred eighty (180) calendar days from the date on which it was filed with the SEC (the "Effectiveness Date"), and any amendment thereto declared effective by the SEC at the earliest possible date. In the event that the Registration Statement has not been (i) filed on or before the date required under the first sentence of this Section 3(b) or (ii) declared effective by the Effectiveness Date, the Company shall pay to the Investor a fee of One Thousand Dollars (\$1,000) per day until the Registration Statement has been declared effective by the SEC. The Company shall use reasonable best efforts to keep the Registration Statement effective pursuant to Rule 415 promulgated under the Securities Act and available for the resale by the Investor of all of the Registrable Shares covered thereby at all times until the date on which the Investor shall have sold all the Registrable Shares covered thereby (such period of time, the "Registration Period"). The Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. The Company shall not file another registration statement with the SEC until the Registration Statement registering the Registrable Shares is declared effective by the SEC.

(ii) On the earlier of (i) the date that the Registration Statement becomes effective (the “Commencement Date”) and (ii) such time that the Investor shall request, provided all conditions of Rule 144 under the Securities Act are met, the Company shall, no later than one (1) Business Day following the delivery by the Investor to the Company or the Transfer Agent of one or more legended certificates representing the Registrable Shares as the case may be (which certificates the Investor shall promptly deliver on or prior to the first to occur of the events described in clauses (i) and (ii) of this sentence), as directed by the Investor, issue and deliver (or cause to be issued and delivered) to the Investor, as requested by the Investor, either: (A) a certificate representing such Registrable Shares that is free from all restrictive and other legends or (B) a number of shares of Common Stock equal to the number of Registrable Shares represented by the certificate(s) so delivered by the Investor as DWAC Shares. The Company shall take all actions to carry out the intent and accomplish the purposes of the immediately preceding sentence, including, without limitation, delivering all such legal opinions, consents, certificates, resolutions and instructions to the Transfer Agent, and any successor transfer agent of the Company, as may be requested from time to time by the Investor or necessary or desirable to carry out the intent and accomplish the purposes of the immediately preceding sentence. On the Commencement Date, the Company shall issue to the Transfer Agent, and any subsequent transfer agent, (i) irrevocable instructions in the form required by the Investor (the “Commencement Irrevocable Transfer Agent Instructions”) and (ii) a notice of effectiveness of the Registration Statement in the form required by the Investor (the “Notice of Effectiveness of Registration Statement”), in each case with respect to the Registrable Shares in accordance with the terms of this Agreement. So long as the Registration Statement remains effective, any and all Registrable Shares that are issued from and after the Commencement Date to or for the benefit of the Investor shall be issued only as DWAC Shares. The Company represents and warrants to the Investor that, after the Effective Date and so long as the Registration Statement remains effective, no instruction other than the Commencement Irrevocable Transfer Agent Instructions and the Notice of Effectiveness of Registration Statement referred to in this Section 3(b)(ii) will be given by the Company to the Transfer Agent with respect to the Registrable Shares from and after the Commencement Date, and the Registrable Shares covered by the Registration Statement shall otherwise be freely transferable on the books and records of the Company. The Company agrees that if the Company fails to fully comply with the provisions of this Section 3(b)(ii) within five (5) Business Days of the Investor providing the deliveries referred to above, the Company shall, at the Investor’s written instruction, purchase such shares of Common Stock containing the Restrictive Legend from the Investor at the greater of the (i) purchase price paid for such shares of Common Stock (as applicable) and (ii) the Closing Sale Price of the Common Stock on the date of the Investor’s written instruction.

(c) Rule 424 Prospectus. The Company shall, as required by applicable securities regulations, from time to time file with the SEC, pursuant to Rule 424 promulgated under the Securities Act, the prospectus and prospectus supplements, if any, to be used in connection with sales of the Registrable Shares under the Registration Statement. The Investor and its counsel shall have a reasonable opportunity to review and comment upon such prospectus prior to its filing with the SEC, and the Company shall give due consideration to all reasonable comments to the extent they relate to the Investor or the Purchase Agreement. The Investor shall use its reasonable best efforts to comment upon such prospectus within two (2) Business Days from the date the Investor receives the final pre-filing version of such prospectus.

(d) Delivery of Copies. Upon request of the Investor, the Company shall furnish to the Investor, (i) promptly after the same is prepared and filed with the SEC, at least one copy of the Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits, (ii) upon the effectiveness of the Registration Statement, a copy of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as the Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as the Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Shares owned by the Investor. For the avoidance of doubt, any filing available to the Investor via the SEC's live EDGAR system shall be deemed "furnished to the Investor" hereunder.

(e) Blue Sky Compliance. The Company shall use reasonable best efforts to (i) register and qualify the Registrable Shares under such other securities or "blue sky" laws of such jurisdictions in the United States as the Investor reasonably requests, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Shares for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify the Investor of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Shares for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) Material Changes. As promptly as practicable after becoming aware of such event or facts, the Company shall notify the Investor in writing of the happening of any event or existence of such facts as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver a copy of such supplement or amendment to the Investor (or such other number of copies as the Investor may reasonably request). The Company shall also promptly notify the Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when the Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to the Investor by e-mail or facsimile on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to the Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to the Registration Statement would be appropriate.

(g) Stop Orders. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of the Registration Statement, or the suspension of the qualification of any Registrable Shares for sale in any jurisdiction and, if such an order or suspension is issued or otherwise occurs, to obtain the withdrawal of such order or resumption of such effectiveness at the earliest possible moment and to notify the Investor of the issuance of such order or occurrence of such suspension and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) Securities Exchange. The Company shall (i) cause all the Registrable Shares to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Shares is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all the Registrable Shares on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(h).

(i) Certificates. The Company shall cooperate with the Investor to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Shares or electronic delivery of such securities to be offered pursuant to the Registration Statement and enable such certificates to be in such denominations or amounts as the Investor may reasonably request and registered in such names as the Investor may request.

(j) Transfer Agent. The Company shall at all times provide a transfer agent and registrar with respect to its Common Stock.

(k) Supplements; Amendments. If requested by the Investor, the Company shall (i) immediately incorporate in a prospectus supplement or post-effective amendment such information as the Investor believes should be included therein relating to the sale and distribution of Registrable Share; (ii) make all required filings of such prospectus supplement or post-effective amendment as soon as practicable upon notification of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any registration statement. The Investor agrees that, upon receipt of any written or oral notice received by the Company and written notice from the Company to the Investor of the happening of any event or existence of facts of the kind described in the first sentence of Section 3(g) or this Section 3(k), the Investor will immediately discontinue disposition of Registrable Securities pursuant to any registration statement(s) covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended prospectus contemplated by in the first sentence of Section 3(g) or this Section 3(k). Notwithstanding anything to the contrary, the Company shall cause its transfer agent to promptly deliver shares of Common Stock without any restrictive legend in accordance with the terms of the Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in in the first sentence of Section 3(g) or this Section 3(k) and for which the Investor has not yet settled.

(l) Other Authorities. The Company shall use its reasonable best efforts to cause the Registrable Shares covered by any registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Shares.

(m) Registration Confirmation. Within one (1) Business Day after any registration statement which includes the Registrable Shares is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Shares (with copies to the Investor) confirmation that such registration statement has been declared effective by the SEC. Thereafter, if requested by the Investor at any time, the Company shall require its counsel to deliver to the Investor a written confirmation whether or not the effectiveness of such registration statement has lapsed at any time for any reason (including, without limitation, the issuance of a stop order) and whether or not the registration statement is current and available to the Investor for sale of all of the Registrable Shares.

(n) Other Actions. The Company shall take all other reasonable actions reasonably requested by the Investor in connection with the disposition by the Investor of Registrable Shares pursuant to the Registration Statement. The Company hereby represents and warrants that it has not provided the Investor with any information that constitutes or may constitute material non-public information. The Company confirms that neither it nor any other Person acting on its behalf shall provide the Investor or its agents or counsel with any information that constitutes or might constitute material, non-public information, unless a simultaneous public announcement thereof is made by the Company in the manner contemplated by Regulation FD. In the event of a breach of the foregoing covenant by the Company or any Person acting on its behalf (as determined in the reasonable good faith judgment of the Investor), in addition to any other remedy provided herein, the Investor shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, non-public information without the prior approval by the Company; provided the Investor shall have first provided notice to the Company that it believes it has received information that constitutes material, non-public information, the Company shall have at least 24 hours to publicly disclose such material, non-public information prior to any such disclosure by the Investor, and the Company shall have failed to publicly disclose such material, non-public information within such time period. The Investor shall not have any liability to the Company, any of its Subsidiaries, or any of their respective directors, officers, employees, stockholders or agents, for any such disclosure. The Company understands and confirms that the Investor shall be relying on the foregoing representation and covenants in effecting transactions in securities of the Company.

4. CONSENT TO CHARDAN ATM.

Notwithstanding any applicable restrictions in the Purchase Agreement, Transaction Documents, or otherwise, the Investor hereby consents to the Company's entering into the Chardan ATM and also consents to the Company's pursuit and consummation of the transactions related thereto, provided that there are no provisions within such agreement that in any manner, directly or indirectly, limit the Investor's ability to carry out or effect the sale of shares of Common Stock pursuant to a registration statement or otherwise, or in any manner, directly or indirectly, conflict with the Surviving Obligations and the Company and parties thereto shall execute the Chardan Agreement within three (3) calendar days from the Effective Date and the Company files a Current Report on Form 8-K to report such transaction within four (4) Business Days of the Chardan Agreement's execution date.

5. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, County of New York, for the adjudication of any dispute hereunder or under the other Transaction Documents or in connection herewith or therewith, or with any transaction contemplated hereby or discussed herein, 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 brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. 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 to such party at the address for such 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 manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature or signature delivered by e-mail in a “.pdf” format data file shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Notices. Any notices, consents or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt when delivered personally; (ii) upon receipt when sent by facsimile or email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses for such communications shall be:

If to the Company:

Nuvilex, Inc.
12510 Prosperity Drive, Suite #310
Silver Springs, MD 20904
Telephone: (917) 5950-2850
Facsimile: (917) 595-2851
E-mail: kwaggoner@nuvilex.com
Attention: Kenneth L. Waggoner, CEO

With a copy to:

Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4159
Facsimile: (212) 504-3013
E-mail: mnussbaum@loeb.com
Attention: Mitchell S. Nussbaum, Esq.

If to the Investor:

Lincoln Park Capital Fund, LLC
440 North Wells, Suite 410
Chicago, IL 60654
Telephone: 312-822-9300
Facsimile: 312-822-9301
E-mail: jscheinfeld@lpcfunds.com/jcope@lpcfunds.com
Attention: Josh Scheinfeld/Jonathan Cope

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

K&L Gates LLP
200 S. Biscayne Boulevard, Suite 3900
Miami, FL 33131
Telephone: 305.539.3300
Facsimile: 305.358.7095
E-mail: clayton.parker@klgates.com
Attention: Clayton E. Parker, Esq.

or at such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party three (3) Business Days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or email account containing the time, date, and recipient facsimile number or email address, as applicable, and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service, shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(f) Disclosure: SEC Filings. The Company shall file with the SEC the Current Report on Form 8-K set forth as Exhibit A hereto by no later than 5:00 p.m. Eastern Time, on May __, 2014. The Company and the Investor each hereby unconditionally agree that for a period of two (2) years from the Effective Date that without the prior written consent of the other party, neither party shall issue any other press release, make any other SEC filing, make any other public or private communication or disclosure, written or verbal, of any kind whatsoever with respect to: (i) the other party, its employees, its managers, or any of its affiliates, (ii) the Purchase Agreement, the transactions or any registration statement contemplated under the Purchase Agreement, (iii) this Agreement, and (iv) the termination of the Purchase Agreement. Notwithstanding the foregoing, any party may make written communications and written public disclosures with respect to: (i) the other party, its employees, its managers, or any of its affiliates, (ii) the Purchase Agreement, the transactions or any registration statement contemplated under the Purchase Agreement, (iii) this Agreement, and (iv) the termination of the Purchase Agreement, if and only if: (a) required by law or government regulation (and if required by subpoena or other judicial order such information may be communicated orally as required by such proceedings), (b) required by court order (such information may be communicated orally if required by such order), or (c) required in connection with a written government request, in each case, as evidenced by written advice from such party's legal counsel, in each case, after giving the other party one (1) Business Day prior written notice and the opportunity to review such written communication or written public disclosure (however, in the case of oral disclosures required by subpoena or court order the parties agree and acknowledge that there may be no practicable opportunity to review such matters). Such written advice from such party's legal counsel shall specify in meaningful detail all facts and legal analysis which form the basis of such written advice. In addition to and notwithstanding the foregoing, the Company shall also be permitted to make disclosures in any of its SEC filings but only to the extent that such disclosures are: (I) substantially the same as the information set forth in the Current Report on Form 8-K set forth as Exhibit A hereto, (II) is substantially the same as information which was disclosed by the Company in an SEC filing made prior to the date hereof or (III) is required by the Company's independent registered accounting firm to grant its consent to or approve a particular SEC filing as evidenced by written advice from the Company's independent registered accounting firm. Such written advice from the Company's independent registered accounting firm shall specify in meaningful detail all facts and analysis which form the basis of such written advice.

(g) Rule 144. With a view to making available to the Investor the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Investor to sell any of its shares of Common Stock to the public without registration ("Rule 144"), the Company agrees to fully cooperate in the removal of restrictive legend from any Common Stock share certificates delivered to the Company for transfer by the Investor together with an opinion of Investor's counsel reasonably acceptable to the Company and in customary form that registration is not required under the Securities Act of 1933 or similar state laws in compliance with Rule 144.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investor, including by merger or consolidation. The Investor may not assign its rights or obligations under this Agreement.

(i) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.

(k) No Strict Construction. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(l) Changes to the Terms of this Agreement. This Agreement and any provision hereof may only be amended by an instrument in writing signed by the Company and the Investor. The term "Agreement" and all reference thereto, as used throughout this instrument, shall mean this instrument as originally executed, or if later amended or supplemented, then as so amended or supplemented.

(m) Failure or Indulgence Not Waiver. No failure or delay in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

*** SIGNATURE PAGE FOLLOWS ***

IN WITNESS WHEREOF, the Investor and the Company have caused this Mutual Termination and Release Agreement to be duly executed as of the date first written above.

COMPANY:

NUVILEX, INC.

By: /s/ Kenneth L. Waggoner
Name: Kenneth L. Waggoner
Title: Chief Executive Officer

INVESTOR:

LINCOLN PARK CAPITAL FUND, LLC
BY: LINCOLN PARK CAPITAL PARTNERS, LLC
BY: ROCKLEDGE CAPITAL CORPORATION

By: /s/ Josh Scheinfeld
Name: Josh Scheinfeld
Title: President

EXHIBIT A

CURRENT REPORT ON FORM 8-K

Attached hereto.

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

May 28, 2014

Date of Report (Date of earliest event reported)

NUVILEX, INC.

(Exact Name of Registrant as Specified in its Charter)

Nevada

(State or other jurisdiction of incorporation)

333-68008

(Commission File Number)

62-1772151

(I.R.S. Employer Identification No.)

12510 Prosperity Drive, Suite 310

Silver Spring, Maryland

(Address of Principal Executive Offices)

20904-1643

(Zip Code)

Registrant's telephone number, including area code: **(917) 595-2850**

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
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

Item 1.01 Entry into a Material Definitive Agreement.

On May 28, 2014, Nuvilex, Inc., a Nevada corporation (“Company”), entered into a financial advisory, offering and at the market offering engagement agreement (“Chardan Agreement”), with Chardan Capital Markets, LLC (“Chardan”) pursuant to which Chardan has agreed to use its reasonable best efforts to act as the Company’s sales agent in connection with the sale of the Company’s common stock, \$.0001 par value per share (“Common Stock”) in “at the market” or privately negotiated transactions of up to \$50,000,000, depending upon market conditions and at the discretion of the Company. In connection with such transactions, the Company has agreed to pay Chardan: (i) a cash fee of 3% of the gross proceeds from the sale of any shares of Common Stock sold in an “at-the-market” offering and (ii) a cash fee of 7% of the aggregate sales price of any distinct blocks of Common Stock sold under the Chardan Agreement, plus five-year warrants representing 5% of the number of shares of Common Stock sold. In addition, the Company has agreed to reimburse certain expenses of Chardan in an amount not to exceed \$15,000.

Item 1.02 Termination of a Material Definitive Agreement.

On February 14, 2014, the Company entered into a purchase agreement (“Purchase Agreement”) and a registration rights agreement (“Registration Rights Agreement”) with Lincoln Park Capital Fund, LLC (“Lincoln Park”) pursuant to which Lincoln Park purchased \$2,000,000 of our Common Stock and the Company had the right to sell to Lincoln Park up to \$25,000,000 in shares of its Common Stock, subject to certain limitations.

On May 28, 2014, the Company and Lincoln Park entered into a Mutual Termination and Release Agreement (“Termination Agreement”) terminating the Purchase Agreement *provided* that: (i) the representations and warranties of Lincoln Park and the Company contained in the Purchase Agreement; (ii) the covenants regarding “Variable Rate Transactions” (as defined in the Purchase Agreement) contained in the Purchase Agreement (“Variable Rate Covenants”); (iii) the indemnification provisions set forth in Section 9 of the Purchase Agreement; (iv) the agreements and covenants set forth in the Purchase Agreement regarding notice, governing law and certain other related administrative provisions; and (v) the obligations of the Company to register for resale all 14,125,000 shares of Common Stock currently owned by Lincoln Park each survive such termination and continue in full force and effect indefinitely, and *provided* further that the Variable Rate Covenants will terminate upon the earlier of the one year anniversary of the effectiveness of the registration referred to in the preceding clause (v) (“Effective Date”) and the date on which Lincoln Park has sold all of its shares of Common Stock. Pursuant to the Termination Agreement, Lincoln Park has consented to the entry into of the Chardan Agreement, so long there are no provisions within the Chardan Agreement that in any manner, directly or indirectly, limit Lincoln Park’s ability to carry out or effect the sale of shares of Common Stock pursuant to a registration statement or otherwise, or in any manner, directly or indirectly, conflict with the surviving obligations under the Termination Agreement and the Company and Chardan execute the Chardan Agreement within three (3) calendar days from the Effective Date and the Company files a Current Report on Form 8-K to report such transaction within four (4) business days of the Chardan Agreement’s execution date. The Company has issued 1,062,500 shares of its Common Stock to Lincoln Park in connection with it consenting to this transaction.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 4.1 Mutual Termination and Release Agreement, dated as of May 28, 2014, by and between Nuvilex, Inc. and Lincoln Park Capital Fund, LLC.
- 10.1 Financial Advisory, Offering and At the Market Offering Engagement Letter between Nuvilex, Inc. and Chardan Capital Markets, LLC dated May 28, 2014.
- 99.1 Press Release dated May 29, 2014.

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.

Dated May 29, 2014

NUVILEX, INC.

By: _____
Kenneth L. Waggoner
Chief Executive Officer

May 28, 2014

Nuvilex, Inc.
12510 Prosperity Drive
Silver Spring, MD 20904-1643
Phone: 917-595-2850
Fax: 917-595-2851
Attention: Kenneth L. Waggoner
Chief Executive Officer and President

Re: Financial Advisory, Offering and At the Market Offering (“ATM”)

Dear Mr. Waggoner:

This letter will confirm our understanding that the company known to us as Nuvilex, Inc. (“Company”) has engaged Chardan Capital Markets, LLC (“Chardan”, “Advisor”, “Placement Agent”) to act as the Company’s sole managing financial advisor and exclusive placement agent in connection with a planned offering of the Company’s common shares of common stock (“Transaction”).

The terms of our appointment are as follows:

1. Engagement Period. The Company hereby engages Chardan, for the period beginning on the date hereof and ending upon consummation of the “Offering,” defined below (“Engagement Period”). During the Engagement Period or until the consummation of the Offering, and as long as Chardan is proceeding in good faith with the Offering, the Company agrees not to solicit, negotiate with or enter into any agreement with any other source of financing (whether equity, debt or otherwise), any underwriter, potential underwriter, placement agent, financial advisor, fund, investment vehicle or any other person or entity in connection with an offering of the Company’s securities or any other financing by the Company, except pursuant to the Mutual Termination and Release Agreement dated on or about the date hereof between the Company and Lincoln Park Capital Fund, LLC (“Lincoln Park Agreement”) or as otherwise mutually agreed to by Chardan and the Company.

(a) Offering. The Offering will consist of the proposed placement (“Offering”) of up to the total shares and amount (up to \$50 million) raised under the Company’s Form S-3 to be filed with the SEC, less the number of shares and amount relating to the Lincoln Park Agreement included in such Form S-3 (“Shares”). Shares are sometimes referred to herein as “Securities”. Chardan will act the exclusive sales agent for the Company, on a “reasonable best efforts” basis, in connection with the Offering.

(b) Agent Sales. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company will issue and agrees to sell Shares from time to time through Chardan, acting as sales agent, and Chardan agrees to use its reasonable best efforts to sell, as sales agent for the Company, the Shares on the following terms:

(i) The Shares are to be sold on a daily basis or otherwise as shall be agreed to by the Company and Chardan on any day that (A) is a trading day for the OTCQB operated by the OTC Markets Group, Inc. ("OTCQB"), (B) the Company has instructed Chardan by telephone (confirmed promptly by electronic mail) to make such sales ("Sales Notice") and (C) the Company has satisfied its obligations under Section 6 of this Agreement. The Company will designate the maximum amount of the Shares to be sold by Chardan daily (subject to the limitations set forth in Section 1(a)) and the minimum price per Share at which such Shares may be sold. Subject to the terms and conditions hereof, Chardan shall use its reasonable efforts to sell on a particular day all of the Shares designated for the sale by the Company on such day. The gross sales price of the Shares sold under this Section 1(b) shall be the market price for shares of the Shares sold by Chardan under this Section 1(b) on the OTCQB at the time of sale of such Shares.

(ii) The Company acknowledges and agrees that (A) there can be no assurance that Chardan will be successful in selling the Shares, (B) Chardan will incur no liability or obligation to the Company or any other person or entity if it does not sell Shares for any reason other than a failure by Chardan to use its reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Shares as required under this Agreement, and (C) Chardan shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement. Notwithstanding (ii)(C) above, if Chardan shall purchase and sell as a principal in any transaction, and not as a sales agent for the Company, Chardan shall only resell to the public and not through privately negotiated transactions, or to or for its own account.

(iii) The Company shall not authorize the issuance and sale of, and Chardan shall not be obligated to use its reasonable efforts to sell, any Share at a price lower than the minimum price therefor designated from time to time by the Company's Board of Directors ("Board"), or a duly authorized committee thereof, and notified to Chardan in writing. The Company or Chardan may, upon notice to the other party hereto by telephone (confirmed promptly by electronic mail), suspend the offering of the Shares for any reason and at any time; provided, however, that such suspension or termination shall not affect or impair the parties' respective obligations with respect to the Shares sold hereunder prior to the giving of such notice.

(iv) Chardan may sell Shares by any method permitted by law deemed to be an ATM as defined in Rule 415, including without limitation sales made directly on the OTCQB, on any other existing trading market for the Common Stock or to or through a market maker. Chardan may also sell Shares in privately negotiated transactions; provided however, that any Shares sold in privately negotiated transactions must first be approved for sale by the Company.

(v) Chardan shall provide written confirmation (which may be by facsimile or electronic mail) to the Company following the close of trading on the OTCQB each day in which the Shares are sold under this Section 1(b) setting forth the number of the Shares sold on such day, the aggregate gross sales proceeds and the net proceeds to the Company, and the compensation payable by the Company to Chardan with respect to such sales.

(vi) Upon delivery of a Sales Notice, the Company shall issue and deliver the maximum number of Shares to be sold pursuant to the Sales Notice to Chardan's account at The Depository Trust Company ("DTC") via the DWAC system. Chardan shall have no obligation to attempt to sell Shares prior to the delivery of the Shares. Settlement for sales of the Shares pursuant to this Section 1(b) will occur on the last day of the month for any sales of Shares with a Settlement Date that occurred before the last day of such month. For the purposes of this Agreement, the sale of Shares will settle on the third (3rd) Business Day following the date on which such sales are made (each, a "Settlement Date"). Chardan shall notify the Company of each sale of Shares on the date of such sale. On the last day of each month, Chardan shall notify the Company of the amount of proceeds to be delivered to the Company ("Net Proceeds") which will be equal to the aggregate sales price received by Chardan, after deduction for (i) Chardan's commission, discount or other compensation for such sales payable by the Company pursuant to Section 1 hereof, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(vii) At each Settlement Date, the Company shall be deemed to have affirmed each representation and warranty contained in this Agreement as if such representation and warranty were made as of such date, modified as necessary to relate to the Registration Statement and the Prospectus as amended as of such date. Any obligation of Chardan to use its reasonable efforts to sell the Shares on behalf of the Company shall be subject to the continuing accuracy of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 6 of this Agreement.

2. Pricing. The terms of such Placement shall be mutually agreed upon by the Company and the purchasers (each, "Purchaser" and collectively, "Purchasers") and nothing herein constitutes that Chardan would have the power or authority to bind the Company or any Purchaser or an obligation for the Company to issue any Shares.

3. Compensation.

(a) In connection with a Transaction structured as an ATM, the Company will pay Chardan a cash fee of 3% ("ATM Placement Fee") of the aggregate gross proceeds from the issuance of Securities.

(b) In connection with a Transaction structured as a public offering or private placement of a distinct block or blocks of the Company's Securities, the Company will pay Chardan aggregate transaction fee ("Traditional Placement Fee") as stated below. All such fees shall be immediately paid by the Company to Chardan at the closing of the Transaction; however, if such Transaction occurs through multiple closings, then pro rata portion of such fees shall be paid upon each closing:

(i) Cash Fee. The Company shall pay to Chardan an aggregate cash fee equal to seven percent (7.0%) of the aggregate sales price of Securities sold or amount drawn on a revolving facility in the Transaction.

(i i) Warrant Fee. The Company shall pay to Chardan or its designee five-year warrants ("Agent Warrants") to purchase an aggregate of five percent (5.0%) of the number of such Securities sold by the Company in the Transaction. The Agent Warrants shall contain customary terms, including, without limitation, provisions for cashless exercise and the same registration rights afforded to investors in the Transaction.

(i i i) For any Transaction involving an investor introduced to Chardan by the Company, the cash compensation described above shall be reduced by 3%.

4. Expenses. In addition to any fees or other compensation that may be paid to Chardan hereunder, whether or not any Transaction occurs, the Company will reimburse Chardan promptly upon receipt of an invoice for fees and expenses of Chardan's counsel not to exceed \$15,000.

5. SEC Filings. The Company represents and warrants to, and agrees with, the Chardan that:

(a) The Company will file with the Securities and Exchange Commission ("Commission") a registration statement on Form S-3 under the Securities Act of 1933, as amended ("Securities Act") for the registration under the Securities Act of the Shares. At the time of such filing, the Company will meet the requirements of Form S-3 under the Securities Act. Such registration statement will meet the requirements set forth in Rule 415(a)(1)(x) under the Securities Act and comply with said Rule. The Company will file with the Commission pursuant to Rule 424(b) under the Securities Act, and the rules and regulations ("Rules and Regulations") of the Commission promulgated thereunder, a supplement to the form of prospectus included in such registration statement relating to the placement of the Shares and the plan of distribution thereof and has advised the Chardan of all further information (financial and other) with respect to the Company required to be set forth therein. Such registration statement, including the exhibits thereto, as amended at the date of its effectiveness under the Securities Act, is hereinafter called the "Registration Statement"; such prospectus in the form in which it appears in the Registration Statement is hereinafter called the "Base Prospectus"; and the supplemented form of prospectus, in the form in which it will be filed with the Commission pursuant to Rule 424(b) (including the Base Prospectus as so supplemented) is hereinafter called the "Prospectus Supplement." Any reference in this Agreement to the Registration Statement, the Base Prospectus or the Prospectus Supplement shall be deemed to refer to and include the documents incorporated by reference therein ("Incorporated Documents") pursuant to Item 12 of Form S-3 which were filed under the Securities Exchange Act of 1934, as amended ("Exchange Act"), on or before the date of this Agreement, or the issue date of the Base Prospectus or the Prospectus Supplement, as the case may be; and any reference in this Agreement to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Base Prospectus or the Prospectus Supplement shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement, or the issue date of the Base Prospectus or the Prospectus Supplement, as the case may be, deemed to be incorporated therein by reference. All references in this Agreement to financial statements and schedules and other information that is "contained," "included," "described," "referenced," "set forth" or "stated" in the Registration Statement, the Base Prospectus or the Prospectus Supplement (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is or is deemed to be incorporated by reference in the Registration Statement, the Base Prospectus or the Prospectus Supplement, as the case may be. No stop order suspending the effectiveness of the Registration Statement or the use of the Base Prospectus or the Prospectus Supplement will have been issued, and no proceeding for any such purpose will be pending or initiated or, to the Company's knowledge, threatened by the Commission. For purposes of this Agreement, "free writing prospectus" has the meaning set forth in Rule 405 under the Securities Act and the "Time of Sale Prospectus" means the preliminary prospectus, if any, together with the free writing prospectuses, if any, used in connection with the Placement, including any documents incorporated by reference therein.

(b) The Registration Statement (and any further documents to be filed with the Commission) will contain all exhibits and schedules as required by the Securities Act. Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the Securities Act and the Exchange Act and the applicable Rules and Regulations and did not and, as amended or supplemented, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement, each as of its respective date, comply in all material respects with the Securities Act and the Exchange Act and the applicable Rules and Regulations. Each of the Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement, as amended or supplemented, did not and will not contain as of the date thereof any 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 Incorporated Documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the applicable Rules and Regulations, and none of such documents, when they were filed with the Commission, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (with respect to Incorporated Documents incorporated by reference in the Base Prospectus or Prospectus Supplement), in light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Base Prospectus, the Time of Sale Prospectus, if any, or Prospectus Supplement, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act and the applicable Rules and Regulations, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. No post-effective amendment to the Registration Statement reflecting any facts or events arising after the date thereof which represent, individually or in the aggregate, a fundamental change in the information set forth therein is required to be filed with the Commission. There are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (x) have not been filed as required pursuant to the Securities Act or (y) will not be filed within the requisite time period. There are no contracts or other documents required to be described in the Base Prospectus, the Time of Sale Prospectus, if any, or Prospectus Supplement, or to be filed as exhibits or schedules to the Registration Statement, that have not been described or filed as required.

(c) The Company has delivered, or will as promptly as practicable deliver, to Chardan complete conformed copies of the Registration Statement and of each consent and certificate of experts, as applicable, filed as a part thereof, and conformed copies of the Registration Statement (without exhibits), the Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement, as amended or supplemented, in such quantities and at such places as Chardan reasonably request. Neither the Company nor any of its directors and officers has distributed and none of them will distribute, prior to the Closing Date, any offering material in connection with the offering and sale of the Shares other than the Base Prospectus, the Time of Sale Prospectus, if any, the Prospectus Supplement, the Registration Statement, copies of the documents incorporated by reference therein and any other materials permitted by the Securities Act.

6. Representations and Warranties. Except as set forth under the corresponding section of the Disclosure Schedules which Disclosure Schedules shall be deemed a part hereof, the Company hereby makes the representations and warranties set forth below to the Chardan.

(a) Organization and Qualification. All of the direct and indirect subsidiaries (individually, "Subsidiary") of the Company are set forth on Schedule 3(A). Except as set forth in Schedule 3(A), the Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any "Liens" (which for purposes of this Agreement shall mean a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction), and all 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. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of this Agreement, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement (any of (i), (ii) or (iii), a "Material Adverse Effect") and no "Proceeding" (which for purposes of this Agreement shall mean any action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened) has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(b) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, its board of directors or its stockholders in connection therewith other than in connection with the “Required Approvals” (as defined in subsection 3(D) below). This Agreement has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(c) No Conflicts. The execution, delivery and performance of this Agreement by the Company, the issuance and sale of the Securities and the consummation by the Company of the other transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company’s or any Subsidiary’s certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), with respect to the Lincoln Park Agreement or such as could not have or reasonably be expected to result in a Material Adverse Effect.

(d) 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” (defined as 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, including, without limitation, the OTCQB) in connection with the execution, delivery and performance by the Company of this Agreement, other than such filings as are required to be made under applicable Federal and state securities laws (collectively, “Required Approvals”).

(e) Issuance of the Securities; Registration. The Securities are duly authorized and, when issued and paid for in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in this Agreement. The issuance by the Company of the Securities will be registered under the Securities Act and all of the Securities will be freely transferable and tradable by the Purchasers without restriction (other than any restrictions arising solely from an act or omission of a Purchaser). The Securities will be issued pursuant to the Registration Statement and the issuance of the Securities will be registered by the Company under the Securities Act. Upon its effectiveness under the Securities Act, the Registration Statement will be available for the issuance of the Securities thereunder and the Company will not have received any notice that the Commission has issued or intends to issue a stop-order with respect to the Registration Statement or that the Commission otherwise has suspended or withdrawn the effectiveness of the Registration Statement, either temporarily or permanently, or intends or has threatened in writing to do so. The "Plan of Distribution" section under the Registration Statement permits the issuance and sale of the Securities hereunder. Upon receipt of the Securities, the Purchasers will have good and marketable title to such Securities and the Securities will be freely tradable on the OTCQB.

(f) Capitalization. The capitalization of the Company is as set forth on Schedule 3(F). The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees and pursuant to the conversion or exercise of securities exercisable, exchangeable or convertible into Common Stock ("Common Stock Equivalents"). No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement, except for Lincoln Park as described above. Except as a result of the purchase and sale of the Securities or as described in the SEC Reports (as defined below) or disclosed to Chardan, 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 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 of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities 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 such securities. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. 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, except as otherwise disclosed to Chardan.

(g) SEC Reports; Financial Statements. The Company has complied in all material respects with requirements to file all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “SEC Reports”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the Commission promulgated thereunder, 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 the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(h) 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 the SEC Reports, (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 required to be 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” (defined as 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 144 under the Securities Act), except pursuant to existing Company stock option plans or as a result of a direct stock grant. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth on Schedule 3(h), no event, liability or development has occurred or exists with respect to the Company or its Subsidiaries or their respective business, properties, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made that has not been publicly disclosed one trading day prior to the date that this representation is made.

(i) 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, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of this Agreement or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, 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 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 or any Subsidiary under the Exchange Act or the Securities Act. None of the Company’s or its Subsidiaries’ employees is a member of a union that relates to such employee’s relationship with the Company, and neither the Company or any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. No executive officer, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(j) Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company which could reasonably be expected to result in a Material Adverse Effect.

(k) Compliance. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws applicable to its business and all such laws that affect the environment, except in each case as could not have a Material Adverse Effect.

(l) Regulatory Permits. The Company and the Subsidiaries 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 have or 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.

(m) Title to Assets. To the extent possible, the Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them that is material to the business of the Company and the Subsidiaries and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, 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 the Subsidiaries 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 the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(n) Patents and Trademarks. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other similar intellectual property rights necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could have a Material Adverse Effect (collectively, “Intellectual Property Rights”). Neither the Company nor any Subsidiary has received notice (written or otherwise) that the Intellectual Property Rights used by the Company or any Subsidiary violates or infringes upon the rights of any third party. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights of others. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Insurance. The Company and the Subsidiaries 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 the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate subscription amount under this Agreement. To the best knowledge of the Company, such insurance contracts and policies are accurate and complete. 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.

(p) 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 its employees are 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, other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement of expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(q) Sarbanes-Oxley. The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it as of the date hereof and of the closing date of the Placement.

(r) Certain Fees. Except as otherwise provided in this 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 this Agreement. The Purchasers 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 this Agreement.

(s) OTCQB Rules. The issuance and sale of the Securities hereunder will not contravene the rules and regulations of the OTCQB.

(t) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become subject to the Investment Company Act.

(u) Registration Rights. Except as disclosed in the SEC Reports and except for Lincoln Park, no Person has any right to cause the Company to effect the registration under the Securities Act of any Securities of the Company.

(v) Application of Takeover Protections. The Company and its 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 Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under this Agreement, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(w) Solvency. Based on the financial condition of the Company as of the Closing Date after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature; (ii) the Company's assets do not constitute unreasonably small capital to carry on its business for the current fiscal year as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, and projected capital requirements and capital availability thereof; and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its debt when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. The SEC Reports set forth as of the dates thereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" shall mean (i) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (ii) all guaranties, endorsements and other contingent obligations in respect of Indebtedness of others, whether or not the same are or should be reflected in the Company's balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (iii) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(x) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and each Subsidiary has filed all necessary federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been asserted or threatened against the Company or any Subsidiary.

(y) 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.

(z) Accountants. To the knowledge of the Company, the Company's accountants who the Company expects will express their opinion with respect to the financial statements to be included in the Company's next Annual Report on Form 10-K, are a registered public accounting firm as required by the Securities Act.

(a a) 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 Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities (other than for the Chardan's placement of the Securities), or (iii) paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Company.

(b b) Approvals. The issuance and quotation of the Shares on the OTCQB requires no further approvals, including but not limited to, the approval of shareholders.

(cc) FINRA Affiliations. There are no affiliations with any FINRA member firm among the Company's officers, directors or, to the knowledge of the Company, any five percent (5%) or greater stockholder of the Company, except as set forth in the Base Prospectus.

7. Offering Conditions. The Offering will be conditioned upon, among other things, the following:

(a) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the Commission, and any request for additional information on the part of the Commission (to be included in the Registration Statement, the Base Prospectus or the Prospectus Supplement or otherwise) shall have been complied with to the reasonable satisfaction of the Placement Agent.

(b) The Placement Agent shall not have discovered and disclosed to the Company on or prior to the Settlement Date that the Registration Statement, the Base Prospectus or the Prospectus Supplement or any amendment or supplement thereto contains an untrue statement of a fact which, in the opinion of counsel for the Placement Agent, is material or omits to state any fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(c) All corporate proceedings and other legal matters incident to the authorization, form, execution, delivery and validity of each of this Agreement, the Shares, the Registration Statement, the Base Prospectus and the Prospectus Supplement and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for the Placement Agent, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(d) The Placement Agent shall have received from outside counsel to the Company such counsel's written opinion, addressed to the Placement Agent and the Purchasers dated as of the Execution Date, in form and substance reasonably satisfactory to the Placement Agent, which opinion shall include a "10b-5" representation from such counsel.

(e) (i) Neither the Company nor any of its Subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Base Prospectus, any loss or interference with its business from fire, explosion, flood, terrorist act or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth in or contemplated by the Base Prospectus; and (ii) since such date there shall not have been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any change, or any development involving a prospective change, in or affecting the business, general affairs, management, financial position, stockholders' equity, results of operations or prospects of the Company and its Subsidiaries, otherwise than as set forth in or contemplated by the Base Prospectus, the effect of which, in any such case described in clause (i) or (ii), is, in the judgment of the Placement Agent, so material and adverse as to make it impracticable or inadvisable to proceed with the sale or delivery of the Shares on the terms and in the manner contemplated by the Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement.

(f) The Common Stock is registered under the Exchange Act and, as of the Settlement Date, the Shares shall be listed and admitted and authorized for trading on the OTCQB, and satisfactory evidence of such actions shall have been provided to the Placement Agent. The Company shall have taken no action designed to, or likely to have the effect of terminating the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from the OTCQB, nor has the Company received any information suggesting that the Commission is contemplating terminating such registration or the OTCQB is contemplating not quoting the Company's Shares on the OTCQB.

(g) Subsequent to the execution and delivery of this Agreement, there shall not have occurred any of the following: (i) trading in securities generally on the New York Stock Exchange, the NASDAQ Capital Market, Alternext US or in trading in any securities of the Company on any exchange or in the over-the-counter market shall have been suspended or minimum or maximum prices or maximum ranges for prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a banking moratorium shall have been declared by federal or state authorities or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, (iii) the United States shall have become engaged in hostilities in which it is not currently engaged, the subject of an act of terrorism, there shall have been an escalation in hostilities involving the United States, or there shall have been a declaration of a national emergency or war by the United States, or (iv) there shall have occurred any other calamity or crisis or any change in general economic, political or financial conditions in the United States or elsewhere, if the effect of any such event in clause (iii) or (iv) makes it, in the sole judgment of the Placement Agent, impracticable or inadvisable to proceed with the sale or delivery of the Shares on the terms and in the manner contemplated by the Base Prospectus and the Prospectus Supplement.

(h) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency or body which would, as of the Settlement Date, prevent the issuance or sale of the Shares or materially and adversely affect or potentially and adversely affect the business or operations of the Company; and no injunction, restraining order or order of any other nature by any federal or state court of competent jurisdiction shall have been issued as of the Settlement Date which would prevent the issuance or sale of the Shares or materially and adversely affect or potentially and adversely affect the business or operations of the Company.

(i) The Company shall have prepared and furnished to the Commission a Report on Form 8-K with respect to the Placement, including as an exhibit thereto this Agreement.

(j) The Company shall have entered into subscription agreements with each of the Purchasers and such agreements shall be in full force and effect and shall contain representations and warranties of the Company as agreed between the Company and the Purchasers.

(k) FINRA shall have raised no objection to the fairness and reasonableness of the terms and arrangements of the Placement Agreement. In addition, the Company shall, if requested by the Placement Agent, make or authorize Placement Agent's counsel to make on the Company's behalf, an Issuer Filing with FINRA pursuant to NASD Rule 2710 with respect to the Registration Statement and pay all filing fees required in connection therewith.

(l) Prior to the Settlement Date, the Company shall have furnished to the Placement Agent such further information, certificates and documents as the Placement Agent may reasonably request.

8 . Finders' Fees and Adjustments. The Company represents to Chardan that the Company is or will be liable for any finder's fees to third parties in connection with the introduction of the Company to Chardan. The Company represents and warrants to Chardan that the entry into this engagement letter or any other action of the Company in connection with the proposed Offering will not violate any agreement between the Company and any other underwriter and that it has obtained the consent of Lincoln Park to enter into this letter agreement. Chardan reserves the right to reduce any item of their compensation or adjust the terms thereof as specified herein in the event that a determination and/or suggestion will be made by FINRA to the effect that the underwriters' aggregate compensation is in excess of FINRA rules or that the terms thereof require adjustment; provided, however, the aggregate compensation otherwise to be paid to the underwriters by the Company may not be increased above the amounts stated herein without the written approval of the Company.

9 . Integration. Other than as previously disclosed or reflected in its public filings, neither the Company nor any of its affiliates has either prior to the initial filing or the effective date of the Registration Statement, made any offer or sale of any securities which are required to be "integrated" pursuant to the Securities Act or the regulations thereunder with the offer and sale of the Shares pursuant to the Registration Statement.

10. Company Cooperation. During the Engagement Period, the Company agrees to cooperate with Chardan and to furnish, or cause to be furnished, to Chardan, any and all information and data concerning the Company, and the Offering that Chardan reasonably deems appropriate (“Information”). The Company will provide Chardan reasonable access during normal business hours from and after the date of execution of this engagement letter until the date of the Closing to all of the Company’s assets, properties, books, contracts, commitments and records and to the Company’s officers, directors, employees, appraisers, independent accountants, legal counsel and other consultants and advisors. The Company represents and warrants to Chardan that all Information (i) contained in any preliminary or final Prospectus prepared by the Company in connection with the Offering and (ii) contained in any filing by the Company with any court or governmental regulatory agency, commission or instrumentality will be complete and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading in the light of the circumstances under which such statements are made. The Company acknowledges and agrees that in rendering its services hereunder, Chardan will be using and relying on such Information (and information available from public sources and other sources deemed reliable by Chardan) without independent verification thereof by Chardan or independent appraisal by Chardan of any of the Company’s assets. The Company acknowledges and agrees that this engagement letter and the terms hereof are confidential and will not be disclosed to anyone other than the officers and directors of the Company and the Company’s accountants, advisors and legal counsel. Except as contemplated by the terms hereof or as required by applicable law, Chardan will keep strictly confidential all non-public Information concerning the Company provided to Chardan. No obligation of confidentiality will apply to Information that (iii) is in the public domain as of the date hereof or hereafter enters the public domain without a breach by Chardan, (iv) was known or became known by Chardan prior to the Company’s disclosure thereof to Chardan as demonstrated by the existence of its written records, (v) becomes known to Chardan from a source other than the Company, and other than by the breach of an obligation of confidentiality owed to the Company or (vi) is disclosed by the Company to a third party without restrictions on its disclosure or (e) is independently developed by Chardan.

11. Administration. Chardan will select a single law firm in each applicable jurisdiction to serve as counsel to Chardan and will collaborate on the engagement of all other professionals, background checks and the like to avoid duplication of effort or cost. For administrative convenience, Chardan will serve to administer such professionals and will pay and submit invoices for expense reimbursement to the Company related to services and expenses that are for the benefit of the Chardan. Other reimbursable expenses of Chardan will be submitted directly to the Company for payment in accordance with Section 1 hereof. The allocation of the compensation payable to Chardan as selling commission to other dealers or for other permitted purposes set forth in Section 1 of this Agreement shall be determined by Chardan without reference to the Company. Disbursements of such allocations shall be made solely and directly by Chardan as it determines.

12. Third-Party Rights. This engagement letter does not create, and shall not be construed as creating rights enforceable by any person or entity not a party hereto, except those entitled hereto by virtue of the indemnification provisions hereof. The Company acknowledges and agrees that Chardan is not and shall not be construed as a fiduciary of the Company and shall have no duties or liabilities to the equity holders or the creditors of the Company or any other person by virtue of this engagement letter or the retention of Chardan hereunder, all of which are hereby expressly waived.

13. Indemnification.

(a) To the extent permitted by law, the Company will indemnify Chardan, together with its respective affiliates, stockholders, directors, officers, employees and controlling persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) against all losses, claims, damages, expenses and liabilities, as the same are incurred (including the reasonable fees and expenses of counsel), relating to or arising out of its activities hereunder or pursuant to this engagement letter, except to the extent that any losses, claims, damages, expenses or liabilities (or actions in respect thereof) are found in a final judgment (not subject to appeal) by a court of law to have resulted primarily and directly from any Chardan's willful misconduct or gross negligence in performing the services described in this Agreement.

(b) Promptly after receipt by any Chardan of notice of any claim or the commencement of any action or proceeding with respect to which such Chardan is entitled to indemnity hereunder, Chardan will notify the Company in writing of such claim or of the commencement of such action or proceeding, but failure to so notify the Company shall not relieve the Company from any obligation it may have hereunder, except and only to the extent such failure results in the forfeiture by the Company of substantial rights and defenses. If the Company so elects or is requested by Chardan, the Company will assume the defense of such action or proceeding and will employ counsel reasonably satisfactory to such Chardan and will pay the fees and expenses of such counsel. Notwithstanding the preceding sentence, Chardan will be entitled to employ counsel separate from counsel for the Company and from any other party in such action if counsel for Chardan reasonably determines that it would be inappropriate under the applicable rules of professional responsibility for the same counsel to represent both the Company and Chardan. In such event, the reasonable fees and disbursements of no more than one such separate counsel will be paid by the Company, in addition to local counsel. The Company will have the exclusive right to settle the claim or proceeding provided that the Company will not settle any such claim, action or proceeding without the prior written consent of Chardan, which will not be unreasonably withheld.

(c) The Company agrees to notify Chardan promptly of the assertion against it or any other person of any claim or the commencement of any action or proceeding relating to a transaction contemplated by this engagement letter.

(d) If for any reason the foregoing indemnity is unavailable to Chardan or insufficient to hold Chardan harmless, then the Company shall contribute to the amount paid or payable by Chardan as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect not only the relative benefits received by the Company on the one hand and Chardan on the other, but also the relative fault of the Company on the one hand and Chardan on the other that resulted in such losses, claims, damages or liabilities, as well as any relevant equitable considerations. The amounts paid or payable by a party in respect of losses, claims, damages and liabilities referred to above shall be deemed to include any legal or other fees and expenses incurred in defending any litigation, proceeding or other action or claim. Notwithstanding the provisions hereof, Chardan's share of the liability hereunder shall not be in excess of the amount of fees actually received, or to be received, by Chardan under this engagement letter (excluding any amounts received as reimbursement of expenses incurred by Chardan).

(e) These indemnification provisions shall remain in full force and effect whether or not the transaction contemplated by this engagement letter is completed and shall survive the termination of this engagement letter, and shall be in addition to any liability that the Company might otherwise have to any indemnified party under this engagement letter or otherwise.

13. Miscellaneous. The Company represents that it is free to enter into this engagement letter and the transactions contemplated hereby, that it will act in good faith and that it will not hinder Chardan's efforts hereunder. This engagement letter will be deemed to have been made and delivered in New York City and both the binding provisions of this engagement letter and the transactions contemplated hereby will be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York, without regard to the conflict of laws principles thereof. Each of Chardan and the Company: (i) agrees that any lawsuit, action or proceeding arising out of or relating to this engagement letter and/or the transactions contemplated hereby will be instituted exclusively in New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, (ii) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (iii) irrevocably consents to the jurisdiction of the New York Supreme Court, County of New York, and the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Placement Agent and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address will be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon Chardan mailed by certified mail to Chardan's address will be deemed in every respect effective service process upon Chardan, in any such suit, action or proceeding.

We are delighted at the prospect of working with you and look forward to a successful Offering. If you are in agreement with the foregoing, please sign and return to us one copy of this engagement letter. This engagement letter may be executed in counterparts (including facsimile or .pdf counterparts), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Very truly yours,

CHARDAN CAPITAL MARKETS, LLC

By /s/ Kerry Propper
Kerry Propper
CEO

Accepted and agreed as of the date first written above:

NUVILEX, INC.

By /s/ Kenneth L. Waggoner
Kenneth L. Waggoner
Chief Executive Officer and President



Nuvilex Enters into an At the Market Banking Agreement with Chardan Capital Markets

SILVER SPRING, MD, May 29, 2014 (GLOBE NEWSWIRE) – Nuvilex, Inc. (OTCQB: NVLX), a clinical-stage international biotechnology company providing cell and gene therapy solutions for the treatment of diseases, announced today that it has entered into an “At the Market” banking agreement with Chardan Capital Markets, LLC under which Nuvilex may seek to raise up to a total of \$50,000,000 depending upon market conditions and at the discretion of Nuvilex. In the banking agreement, Chardan Capital Markets will act as the exclusive placement agent for Nuvilex. The funds will be used for: (i) late-phase clinical trials in pancreatic cancer with Clinical Network Services (CNS) in Australia; (ii) preclinical studies and clinical trials with Translational Drug Development (TD2) to address the symptoms of pancreatic cancer to be conducted in the U.S.; and (iii) further testing and research for diabetes in Europe.

Kenneth L. Waggoner, the CEO and President of Nuvilex said of the agreement, “We are fortunate to have negotiated a banking agreement of up to \$50,000,000 with Chardan Capital Markets. We also want to thank Lincoln Park Capital for the \$2 million investment we received from them. In light of our banking agreement with Chardan Capital Markets, we have elected to terminate our agreement with Lincoln Park Capital pursuant to a mutual termination agreement. Currently, Nuvilex’s cash position remains strong and we are under no financial pressure to meet any long or short term cash requirements. Our shareholders should be assured that Nuvilex has worked diligently to fund our technology in a responsible fashion so that shareholder value is maximized. The banking agreement represents a further endorsement by the marketplace of our efforts to develop disease treatments based on the “Cell-in-a-Box[®]” technology and the steps that we have made to bring those treatments to a point where they can be commercialized.”

In connection with the banking agreement with Chardan Capital Markets, Nuvilex intends to file an S-3 Registration Statement. This “At the Market” funding will help Nuvilex preserve shareholder value. The S-3 Registration Statement will also include shares currently owned by Lincoln Park Capital.

A more detailed description of the banking agreement with Chardan Capital Markets and the mutual termination agreement with Lincoln Park Capital are set forth in Nuvilex’s Form 8-K which has been filed with the SEC and can be reviewed at <http://www.sec.gov/>.

About Nuvilex

Nuvilex, Inc. (OTCQB: NVLX) is a clinical stage biotechnology company focused on developing and patented technology preparing to commercialize treatments for cancer and diabetes based upon a proprietary cellulose-based live-cell encapsulation technology known as Cell-in-a-Box[®]. This unique and will be used as a platform upon which treatments for several types of cancer, including advanced inoperable pancreatic cancer, and diabetes are being built. Nuvilex's treatment for pancreatic cancer involves the widely used anticancer prodrug ifosfamide, together with encapsulated live cells, which convert ifosfamide into its active or "cancer-killing" form. Nuvilex is also working towards clinical trials associated with the symptoms of advanced pancreatic cancer and other abdominal cancers.

About Chardan Capital Markets

Chardan Capital Markets, LLC is an international investment bank headquartered in New York City, with offices in Los Angeles and Beijing. Chardan Capital Markets provides a wide array of financial services including investment banking, capital markets, international trading and equity research. The investment banking group focuses on providing banking and advisory services to private and public companies in small and mid-cap markets. The institutional coverage of Chardan Capital Markets spans North America, Europe and Asia. Chardan Capital Markets, LLC is a registered broker-dealer with the U.S. Securities and Exchange Commission and is a member of the following: Financial Industry Regulatory Authority (FINRA); Municipal Securities Rulemaking Board (MSRB); Securities Insurance Protection Corporation (SIPC); NASDAQ Stock Market and the NYSE Arca, Inc. To learn more about Chardan Capital Markets, visit www.chardancm.com.

Safe Harbor

This press release may contain forward-looking statements regarding Nuvilex and its future events and results that involve inherent risks and uncertainties. The words "anticipate," "believe," "estimate," "expect," "intend," "plan" and similar expressions, as they relate to Nuvilex or its management, are intended to identify forward-looking statements. Important factors, many of which are beyond the control of Nuvilex, that could cause actual results to differ materially from those set forth in the forward-looking statements include Nuvilex's ability to continue as a going concern, delays in clinical trials or flaws or defects regarding its products, changes in relevant legislation or regulatory requirements, uncertainty of protection of Nuvilex's intellectual property and Nuvilex's continued ability to raise capital. Nuvilex does not assume any obligation to update any of these forward-looking statements.

More information about Nuvilex can be found at www.nuvilex.com. It can also be obtained by contacting Investor Relations Contacts.

Investor Relations Contacts:

Marlin Molinaro

Marmel Communications, LLC

Phone: 702.434.8692 mmolinarofc@aol.com

Dillon Heins

CorProminence, LLC Phone: 218.839.9051

dillonh@corprominence.com