

N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-899 Filed 1-14-97; 8:45 am]

BILLING CODE 8010-01-M

**Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (North Star Universal, Inc., Common Stock, \$.25 Par Value) File No. 1-10134**

January 9, 1997.

North Star Universal, Inc. ("NSU" or "Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company approved resolutions on November 25, 1996, to withdraw the Company's Security from listing on the PSE. The delisting is a condition to consummation of a merger between the Company and Michael Foods, Inc. ("Michael") pursuant to an Agreement and Plan of Reorganization, dated December 21, 1995, between NSU and Michael, as amended as of September 27, 1996, whereby: (i) Michael will be merged into a wholly owned subsidiary of NSU; (ii) NSU will change its name to Michael Foods, Inc. and will continue the business previously conducted by Michael; and (iii) the outstanding common stock of another wholly owned subsidiary of NSU, ENStar Inc., will be distributed pro rata to the shareholders of NSU.

Any interested person may, on or before January 31, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts

bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-897 Filed 1-14-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38140; File No. SR-Amex-96-34]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to Independent Contractors**

January 8, 1997.

**I. Introduction**

On September 27, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposal adopts Exchange Rule 341B, "Independent Contractors," which provides that the Amex will not object to the assertion of independent contractor status by a natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1996).

<sup>3</sup> On October 2, 1996, the Amex amended its proposal to submit the proposal pursuant to Section 19(b)(2) under Act. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 2, 1996 ("Amendment No. 1"). On October 23, 1996, the Amex amended its proposal to eliminate inconsistencies between Amex Rule 341(a) and Amex Rule 341, Commentary .01. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Katherine England, Assistant Director, Division, Commission, dated October 23, 1996 ("Amendment No. 2"). Specifically, Amendment No. 2 deletes language indicating that only officers of a member must be approved and provides that registered representatives, securities lending representatives,

Notice of the proposed rule change and Amendment Nos. 1, 2, and 3 to the proposed rule change were published for comment in the Federal Register on November 5, 1996.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change, as amended.

**II. Description of the Proposal**

According to the Amex, several member organizations recently have begun to utilize independent contractors to perform duties traditionally performed by registered employees. To date, the Exchange has required member organizations who utilize independent contractors to provide a written acknowledgement that the member organization will supervise and otherwise be responsible for the independent contractor in the same manner as if he were an employee. In order to clarify the Exchange's requirements and to ensure that independent contractors are appropriately subject to the Exchange's jurisdiction, the Amex proposes to adopt new Exchange Rule 341B.

Proposed Amex Rule 341B provides that the Amex will not object to the assertion of independent contractor status by a natural person who is a (i) registered representatives, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex. Under the proposal, the natural person asserting independent contractor status and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and, if required by Amex Rule 330, "Fidelity Bonds," is covered by its fidelity bond. Once a member organization approves a registered person's independent contractor status, the following conditions must be satisfied:

- The member organization provides written assurances to the Exchange that it will supervise and control all activities of the independent contractor effected on its behalf, to the same degree

securities traders, and direct supervisors of those persons must be registered and approved. Amendment No. 2 also includes a technical change which clarifies proposed Amex Rule 341B, "Independent Contractors." On October 24, 1996, the Exchange replaced an incorrect reference to Amex Rule 342 with a reference to Amex Rule 320. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Yvonne Fraticelli, Attorney, Division, Commission, dated October 24, 1996 ("Amendment No. 3").

<sup>4</sup> Securities Exchange Act Release No. 37884 (October 29, 1996), 61 FR 56981.

and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320, "Offices—Approval, Supervision, and Control;"<sup>5</sup>

- The member organization submits to the Exchange a copy of a written agreement between the independent contractor and the member organization which provides that the independent contractor will engage in securities related activities solely on behalf of the member organization (except as otherwise explicitly may be permitted by the member organization in writing), that such securities related activities will be subject to the direct detailed supervision, control and discipline of the member organization, that such person is not subject to a statutory disqualification as defined in Section 3(a)(39) of the Act, and that nothing therein will negate any of the foregoing;

- The independent contractor agrees in writing to be subject to the Exchange's jurisdiction; and
- The member organization provides the Exchange with assurances that, if required by Amex Rule 330, the independent contractor is covered by the organization's fidelity insurance and is in compliance with applicable state Blue Sky provisions.<sup>6</sup>

Written notice of the cessation of independent contractor status must be given to the Amex. Proposed Rule 341B does not apply to persons delegated supervisory functions (e.g., branch office manager, registered representative-in-charge), nor does it permit the incorporation of a registered person. The Amex notes that the New York Stock Exchange ("NYSE") has comparable requirements for independent contractors.<sup>7</sup>

The Amex also proposes to amend Definition six, "Registered Employee," to provide a definition for "Registered Person." Under Definition six, as amended, a registered person will mean not only a branch office manager or a registered representative, but also a securities lending representative, a securities trader, and a direct supervisor of a securities lending representative or a securities trader.

In addition, the Amex proposes to amend Amex Rule 340, Commentary .03, to require that a securities lending representative and his or her direct

supervisor must pass any applicable qualification examination.<sup>8</sup>

The Amex proposes to amend Exchange Rule 341 to require that securities traders and securities lending representatives<sup>9</sup> (and their direct supervisors), as well as registered representatives, must be registered with and approved by the Exchange and, as applicable, must pass a qualification examination acceptable to the Exchange. Amex Rule 341, Commentary .01, as amended, will provide that a natural person who is an independent contractor and who performs the duties of a registered representative, securities lending representative, or securities trader is subject to Amex Rule 341.

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(6), in particular, in that it is consistent with the Exchange's regulatory responsibilities and will promote just and equitable principles of trade and protect investors and the public interest.

### III. Findings and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)<sup>10</sup> in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.<sup>11</sup> Specifically, proposed Amex Rule 341B will help to provide for adequate supervision of persons asserting independent contractor status by requiring members to provide direct, detailed supervision, control and discipline of independent

contractors.<sup>12</sup> In addition, the proposed amendments to Amex Rules 340 and 341 will help the Amex to monitor securities traders and securities lending representatives, as well as direct supervisors of registered representatives, securities traders, and securities lending representatives, by requiring such persons to register with and be qualified and approved by the Amex.

According to the Amex, several member organizations recently have begun to utilize independent contractors to perform duties traditionally performed by registered employees. To date, the Exchange has required member organizations who utilize independent contractors to provide a written acknowledgment that the member organization will supervise and otherwise be responsible for the independent contractor, in the same manner as if he were an employee. This position is consistent with the 1982 Letter. The Commission believes that the proposal will protect investors and the public interest by codifying the Amex's policies governing supervision of independent contractors in new Amex Rule 341B. In addition, the Commission believes that Amex Rule 341B will facilitate compliance with the Exchange's rules and the federal securities laws by providing a clear statement of the Amex's policy regarding supervision of independent contractors and by requiring members to provide direct, detailed supervision, control and discipline of independent contractors.

Amex Rule 341B provides that the Amex will not object to the assertion of independent contractor status by a

<sup>12</sup> In 1982, the Division issued a letter restating the Division's policy toward independent contractors. See Letter from Douglas Scarff, Director, Division, Commission, to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 ("1982 Letter"). In its 1982 Letter, the Division noted that the Act requires that a person selling securities be registered with the Commission as a broker-dealer under Section 15(a) unless he is an associated person as defined in Section 3(a)(18) of the Act. With regard to securities salespersons designated as independent contractors, the Division stated that unless an independent contractor's activities are subject to control by the broker-dealer within the scope of Section 3(a)(18) of the Act, the salesperson must be registered individually as a broker-dealer. The Division noted that an independent contractor salesperson whose activities are subject to control by a broker-dealer must be registered with a self-regulatory organization and should be covered by the employer broker-dealer's fidelity bond. Finally, the Division stated that a firm responsible for ensuring either that an independent contractor is registered as a broker-dealer or assuming the supervisory responsibilities attendant to a relationship with an associated person. The Commission believes that the Amex's proposal is consistent with the 1982 Letter.

<sup>8</sup> Currently, there is no qualification exam for securities lending representatives.

<sup>9</sup> Exchange Rule 341, as amended, defines a securities lending representative as a person who has the discretion to commit a member or member organization with which he is associated to any contract or agreement involving securities lending or borrowing activities with any other person. Amex Rule 341, as amended, defines a securities trader as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated and who does not transact any business with the public. The Amex proposes to amend definition six, "Registered Employee," to provide that a "registered person" will include a securities lending representative, a securities trader, and a direct supervisor of a securities lending representative or a securities trader, in addition to a branch officer manager or a registered representative.

<sup>10</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>11</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> See Amendment No. 3, *supra* note 3.

<sup>6</sup> The Amex notes that these requirements do not apply to the traditional practice of a firm using an independent floor broker to execute a transaction on the floor of the Amex.

<sup>7</sup> See NYSE Interpretations and Guidance Handbook, 345(a)/02.

natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.<sup>13</sup> The independent contractor and the member must agree that the independent contractor is subject to the member's direct, detailed supervision, control and discipline. In addition, Amex Rule 341B requires a member to assure the Exchange in writing that it will supervise and control all activities of the independent contractor effected on the member's behalf to the same degree and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320.

Amex Rule 341B further provides for supervision of independent contractors by requiring the member to submit to the Amex a copy of a written agreement between the member and the independent contractor which provides that: (1) The independent contractor will engage in securities related activities solely on the member's behalf (except as otherwise permitted by the member); (2) the independent contractor's securities related activities will be subject to the direct, detailed supervision, control and discipline of the member; and (3) the independent contractor is not subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act. In addition, the proposal requires a member to assure the Exchange that, if required by Amex Rule 330, the individual is covered by the organization's fidelity insurance and has complied with applicable state Blue Sky provisions. Amex Rule 341B also requires an independent contractor to subject himself to the Amex's jurisdiction.<sup>14</sup>

The Commission believes that these requirements should help to ensure that members employ qualified persons as independent contractors and provide

<sup>13</sup> As noted above, only a natural person who is a registered representative, securities trader or securities lending representative may assert independent contractor status. Telephone conversation between Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996. Persons with supervisory functions may not assert independent contractor status. In addition, Amex Rule 341B does not permit the incorporation of registered persons.

<sup>14</sup> Registered persons submit to the authority of the organizations to which they apply for registration on the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). Accordingly, the independent contractors discussed in the proposal become subject to the Amex's jurisdiction when they apply for registration with the Exchange.

adequate supervision of their securities related activities, as required by the Act. In addition, Amex Rule 341B will make clear to independent contractors that they are subject to the Amex's jurisdiction and, accordingly, are subject to disciplinary proceedings by the Amex for violations of the Exchange's rules. The Commission also believes that the provision requiring an independent contractor to be covered by the member's fidelity insurance, if required under Amex Rule 330, will help to protect the member against losses resulting from dishonesty by an independent contractor and is consistent with the proposal's general requirement that independent contractors be treated as employees for purposes of the Exchange's Constitution and rules. The Commission notes that the provisions of Amex Rule 341B are similar to the NYSE's requirements for independent contractors.<sup>15</sup>

The Commission finds that the proposed amendments to Amex Rules 340 and 341 are appropriate and consistent with the Act. Specifically, the Commission believes that the proposed amendments to Amex Rule 341 requiring securities lending representatives and securities traders, as well as direct supervisors of registered representatives, securities lending representatives, or securities traders, to register with and be qualified and approved by the Amex will protect investors and the public interest by allowing the Amex to evaluate persons who seek to perform these functions.<sup>16</sup>

The Commission believes, as it has concluded previously, that it is consistent with the Amex's regulatory responsibility to monitor the activities of securities traders and securities lending representatives.<sup>17</sup> In addition, the Commission continues to believe that requiring securities lenders and securities traders to register with the Amex and assuring that they have

<sup>15</sup> See note 7, *supra*.

<sup>16</sup> Registered representatives, securities traders, and securities lending representatives apply for registration with the Exchange through the Form U-4. To approve a registered representative, securities trader, securities lending representative, or his or her direct supervisor, the Amex reviews the Form U-4, which contains a registered person's disciplinary history and information concerning whether he or she is subject to a statutory disqualification as defined in Section 3(a)(39) of the Act. The Amex also reviews the Form U-4 to determine whether another exchange has approved or rejected the registered person's application to register with that exchange. Telephone conversation between Robert Klein, Managing Director, Membership Services, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996.

<sup>17</sup> See Securities Exchange Act Release No. 25312 (February 4, 1988), 53 FR 4089 (February 11, 1988) (order approving File No. SR-NYSE-86-22).

adequate qualifications ultimately will protect investors and the public interest. The Commission believes that the proposal also protects investors by applying Amex Rule 341 to an independent contractor who performs the duties normally performed by a registered representative, securities lending representative, or a securities trader.

Finally, the Commission believes that the examination requirements contained in Amex Rule 340, Commentary .03, will help to ensure that only a person with an understanding of the applicable rules acts as a securities trader, securities lending representative, or as a direct supervisor of a securities trader or securities lending representative.<sup>18</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Amex-96-34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 97-902 Filed 1-14-97; 8:45 am]

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[Release No. 34-38138; File No. SR-BSE-96-12]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapter 11, Section 34A ("Trading Halts Due to Extraordinary Market Volatility")**

January 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 31, 1996, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange submitted to the Commission Amendment No. 1 to its proposal on January 7, 1997.<sup>3</sup> The Commission is

<sup>18</sup> As noted above, there currently is no qualification examination for securities lending representatives. The provision relating to securities lending representatives will apply if a qualification examination for securities lending representatives is developed.

<sup>19</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>20</sup> 17 CFR 200.30-3(a)(12) (1996).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Karen A. Aluise, Assistant Vice President, BSE, to Holly Smith, Associate Director,