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not members of the stock exchange had arranged to establish private wire connections with exchange members.

Pursuant to rules promulgated by the exchange under the Securities Exchange Act of 1934, the members applied to the exchange for approval of the connections. The exchange granted temporary approval and the connections were established. After an investigation of the broker-dealers, the exchange, allegedly acting at least in part on the basis of derogatory confidential information about them, denied the applications, and the members accordingly discontinued the connections. Despite requests, the exchange declined to explain its action or grant hearing. The broker-dealers, claiming loss of business, sued for injunctive relief and treble damages under the antitrust laws. The exchange's defense was that it had immunity because it acted pursuant to a Federal regulatory statute. The Court, in terms similar to those previously quoted, stated (373 U.S. 347):

It is plain, to begin with, that removal of the wires by collective action of the Exchange and its members would, had it occurred in a context free from other federal regulation, constitute a per se violation of §1 of the Sherman Act. The concerted action of the Exchange and its members here was, in simple