

It has been suggested that this rule will reduce the determination of appealability to an objective test: whether the trial judge has chosen to label his ruling "final."<sup>28</sup> The exercise of some discretion on the part of the trial judge in this matter is, of course, desirable. Also, the provision that all orders not designated "final" shall be considered subject to revision will tend to minimize hardships arising from errors. Nevertheless, a blank acceptance by the appellate courts of such a test as the sole criterion for determining appealability would be unpardonable. It seems doubtful that the appellate courts would refuse to entertain appeals from orders of types previously held final and appealable, merely because the trial judge failed to recognize and label the orders "final." This would in reality be a system of discretionary appeal with the discretion resting entirely in the hands of the trial court.<sup>29</sup> It seems more likely that the amended rule will have little effect upon appealability, and the problem of determining finality in the difficult cases will continue to be the job of the appellate courts.

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#### REVIEWABILITY OF SEC "ORDERS" UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT

The Pittsburgh Railways Company, though not a "public utility company" within the meaning of Section 2(a) (5) of the Public Utility Holding Company Act,<sup>1</sup> was a "subsidiary"<sup>2</sup> of a registered public utility holding company, the Philadelphia Company, and was therefore subject to the requirements of the Act, absent some exemption. On May 10, 1938 the Pittsburgh Company filed a voluntary petition for reorganization under Section 77B of the Bankruptcy Act<sup>3</sup> in the District Court for the Western District of Pennsylvania. Section 11(f) of the Public Utility Holding Company Act, which requires reorganization plans to be approved by the Securities and Exchange Commission prior to submission of such plans to the court,<sup>4</sup> did not at that time apply to the Pittsburgh Company because the company was then exempt by virtue of Commission Rule

<sup>28</sup> 56 Yale L. J. 141 (1946), noting *Libbey-Owens-Ford Glass Co. v. Sylvania Industrial Corp.*, 154 F. 2d 814 (C.C.A. 2d, 1946), cert. den. 328 U.S. 859 (1946).

<sup>29</sup> Judge Frank comments at length on this problem. *Clark v. Taylor*, 163 F. 2d 940, at 951 n. 12 (C.C.A. 2d, 1947). In a concurring opinion in *Audi Vision Inc. v. R.C.A. Mfg. Co.*, 136 F. 2d 621 (C.C.A. 2d, 1943), Judge Frank advocated statutory changes which would allow some type of discretionary appeal by the circuit courts. This suggestion is a result of a belief that the time spent by appellate courts in determining whether a ruling is final could be better spent in determining whether an appeal is desirable in the individual case, considering both trial convenience and justice to the parties.

<sup>1</sup> § 2(a)(5), 49 Stat. 804 (1935), 15 U.S.C.A. § 79b(5) (1941).

<sup>2</sup> § 2(a)(8), 49 Stat. 804 (1935), 15 U.S.C.A. § 79b(8) (1941).

<sup>3</sup> 48 Stat. 912 (1934), amended by 49 Stat. 664 (1935) and 49 Stat. 965 (1935).

<sup>4</sup> ". . . a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the [Securities and Exchange] Commission after opportunity for hearing prior to its submission to the court." § 11(f), 49 Stat. 820 (1935), 15 U.S.C.A. § 79k(f) (1941).

U-3D-5. Although that rule, exempting non-utility subsidiaries from most provisions of the Act, was narrowed by Commission Rule U-49, promulgated on April 1, 1941, the Pittsburgh Company continued to enjoy exemption.<sup>5</sup> While the administration of the estate of the Pittsburgh Company proceeded according to the exemptions of Rules U-3D-5 and U-49(c), the SEC had power to pass upon the reorganization plan in an advisory capacity only, in accordance with Section 172 of the Bankruptcy Act.<sup>6</sup> But on February 28, 1947 the SEC adopted an amendment to Rule U-49(c), which apparently would terminate the Pittsburgh Company's exemption, thus making the company subject to Section 11(f) of the Public Utility Holding Company Act. The probability of such a result led to the filing of a petition in the Court of Appeals for the District of Columbia for review of the Commission's "order." When the SEC moved to dismiss the company's petition, the court denied the motion. *Philadelphia Company v. Securities & Exchange Commission*.<sup>7</sup>

The chief significance of the case appears to lie in the fact that an amendment to a rule of an administrative body which was phrased in general terms and which supposedly was passed pursuant to the agency's rule-making power was deemed an "order" for purposes of judicial review under Section 24(a) of the Public Utility Holding Company Act. That section provides that "Any person or party aggrieved by an *order* issued by the [Securities and Exchange] Commission . . . may obtain a review of such *order* in the circuit court of appeals of the United States within any circuit wherein such person resides . . . or in the United States Court of Appeals for the District of Columbia. . . ."<sup>8</sup> Whether the court was justified in concluding that the amendment of Rule U-49(c) should be deemed an "order" reviewable under this section is the question to be considered.

Distinction between "rules and regulations"<sup>9</sup> of the Commission and "orders" of the Commission is made throughout the Act. In Section 20(c),<sup>10</sup> for example, publication is the only requirement necessary to render rules and regulations effective; but opportunity for hearing is explicitly required before orders may be issued. Sections of the Act dealing with orders require not only notice

<sup>5</sup> "Any such subsidiary company which is the subject of a proceeding for reorganization in any court of the United States in which proceeding the Commission has filed a notice of appearance pursuant to section 208 of chapter X of the Bankruptcy Act . . . shall be exempt from any provision of the Act applicable to the appointment of any trustee for such company or to any transaction entered into with the approval (direct or indirect) of such court: *Provided*, That such transaction does not involve the acquisition of any utility assets or securities of any public-utility or holding company." § 49(c), General Rules and Regulations under the Public Utility Holding Company Act of 1935, as amended to and including January 1, 1946.

<sup>6</sup> 52 Stat. 890 (1938), 11 U.S.C.A. § 572 (1946).

<sup>7</sup> *Philadelphia Co. v. SEC*, 164 F. 2d 889 (App. D.C., 1947), cert. den. 68 S.Ct. 452 (1948).

<sup>8</sup> § 24(a), 49 Stat. 834 (1935), 15 U.S.C.A. § 79x(a) (1941) (italics added).

<sup>9</sup> Hereinafter sometimes referred to as rules. Usually regulations are said to refer to a body of rules.

<sup>10</sup> § 20(c), 49 Stat. 833, 15 U.S.C.A. § 79t(c) (1941).

and opportunity for hearing, but also application of such sections by the Commission only after it finds certain enumerated facts to be present.<sup>11</sup> On the other hand, rules are required by the Act when there is need for formulation of new policies. Thus, the Commission may prescribe only by rule uniform methods for keeping accounts,<sup>12</sup> and rules and regulations are employed to prescribe forms to be used for various purposes.<sup>13</sup> It appears that the term "order," as used in the Act, is meant to refer to the product of quasi-judicial action by the Commission, while rules result from quasi-legislative action.

It will be noted that "order" is used in Section 24(a) instead of "rules and regulations." That Congress intended review only of quasi-judicial action of the Commission under this section is an argument which the wording of the section itself seems to support. For example, the written petition seeking review of an order must be filed within sixty days after the entry of the order.<sup>14</sup> Since rules are prospective and often general in application, they might not affect a person until long after formulation; it would therefore seem unusual for Congress to impose such a time restriction upon persons desiring to question the validity of a rule. Section 24(a) further provides that the Commission shall ". . . file in the court a transcript of the record upon which the order complained of was entered"<sup>15</sup> But there is no requirement for a hearing except in connection with orders. Thus, although records are kept of all hearings,<sup>16</sup> there may be no record of rule-making procedures.

Distinction between orders and rules has been made in connection with other legislative acts. For example, the Massachusetts Supreme Judicial Court in *Nelson v. State Board of Health*<sup>17</sup> in construing a statute giving to any person aggrieved by an *order* of the State board of health the right to an appeal and trial by a jury stated "that *rules* adopted by the State board of health . . . are *quasi-legislative*; that *orders* made by the board . . . are *quasi-judicial* in character; and that the appeal to a jury given by § 4 is from an *order* made by the board in the exercise of its *quasi-judicial* powers and *has no application to regulations made by it in the exercise of its quasi-legislative powers.*"<sup>18</sup> The Supreme Court of Rhode Island made a similar determination in *Standard Oil Co. of New York v. Board of Purification of Waters*,<sup>19</sup> where it held that powers given to the

<sup>11</sup> §§ 2(a)(3), 2(a)(4), 2(a)(7)(B), 2(a)(8)(B), 2(a)(11)(D), 2(b), 49 Stat. 804 (1935), 15 U.S.C.A. §§ 79b(a)(3), 79b(a)(4), 79b(a)(7)(B), 79b(a)(8)(B), 79b(a)(11)(D), 79b(b); § 3(c), 49 Stat. 810 (1935), 15 U.S.C.A. § 79c(c); § 10(d), 49 Stat. 818 (1935), 15 U.S.C.A. § 79j(d); §§ 11(b)(1), 11(b)(2), 11(e), 49 Stat. 820 (1935), 15 U.S.C.A. §§ 79k(b)(1), 79k(b)(2), 79k(e) (1941).

<sup>12</sup> § 15(i), 49 Stat. 828 (1935), 15 U.S.C.A. § 79 o (i) (1941).

<sup>13</sup> §§ 5a, 5b, 49 Stat. 812 (1935), 15 U.S.C.A. §§ 79e(a), 79e(b) (1941).

<sup>14</sup> § 24a, 49 Stat. 834 (1935), 15 U.S.C.A. § 79x(a) (1941).

<sup>15</sup> *Ibid.*

<sup>16</sup> § 19, 49 Stat. 832 (1935), 15 U.S.C.A. § 79s, requires records to be kept of hearings.

<sup>17</sup> 186 Mass. 330, 71 N.E. 693 (1904).

<sup>18</sup> 186 Mass. 330, 335, 71 N.E. 693, 695 (1904) (*italics added*).

<sup>19</sup> 43 R.I. 336, 111 Atl. 887 (1921).

Board of Purification of Waters to make *rules and regulations* were *quasi-legislative*, and that the provision allowing any person aggrieved by an *order* of the board to appeal to the supreme court *did not apply to such rules*.

When it is noted that a distinction between rules and orders has been made throughout the Public Utility Holding Company Act and that the same distinction has been deemed crucial in other cases where statutes worded in a similar fashion have been construed, it becomes apparent that the amendment to Rule U-49(c) should be examined to see whether and for what purposes it is to be deemed an order or a rule. That the amendment was stated in general terms is clear. Provision was made that Rule U-49(c) would be inapplicable to *any subsidiary* which "is the issuer of any securities, or is the obligor on any obligations, which have been guaranteed or assumed by any registered holding company."<sup>20</sup> But the Pittsburgh Company contended that its reorganization was the only one affected by the amendment. This was admitted in effect by the Commission when it pointed out that Rule U-49(c), before the amendment, affected only two reorganization groups, and that the Pittsburgh Company reorganization was the only one of these two groups having guarantee relationships with its parents.<sup>21</sup> The question is whether the fact that the amendment appears presently to affect only the Pittsburgh reorganization makes the amendment quasi-judicial. Although it has been suggested that a distinction between judicial and legislative action is that the former involves specific rights and parties while the latter affects the public in general,<sup>22</sup> Congress, in the Administrative Procedure Act, stated that a "rule" might have either general or *specific* applicability.<sup>23</sup> Thus it seems that the amendment would not be necessarily quasi-judicial, even if its effect were (presently) confined to a specific reorganiza-

<sup>20</sup> Rule U-49(c) was amended by the addition of another provision: "Provided further, that this paragraph shall be inapplicable to any subsidiary company which is the subject of reorganization proceedings (or any subsidiary of such subsidiary company within the meaning of Section 106 (13) of said Chapter X or of Section 2(a)(8) of the Public Utility Holding Company Act), where such subsidiary company, or any subsidiary thereof is the issuer of any securities, or is the obligor on any obligations, which have been guaranteed or assumed by any registered holding company."

<sup>21</sup> Memorandum of Views of the Commission Accompanying Adoption of Rule Amending Rule U-49(c), C.C.H. Fed. Sec. L. Rep. ¶175,754, at 77,801 (1947).

<sup>22</sup> "Unlike an administrative order or a court judgment adjudicating the rights of individuals, which is binding only on the parties to the particular proceeding, a valid exercise of the rule-making power is addressed to and sets a standard of conduct for all to whom its terms apply." *Columbia Broadcasting System, Inc. v. United States*, 316 U.S. 407, 418 (1942); *Rule Making under the Proposed Federal Administrative Procedure Act*, 39 Ill. L. Rev. 273, 274 (1945).

<sup>23</sup> "'Rule' means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structure or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing." 60 Stat. 237 (1946), 5 U.S.C.A. § 1001(c) (Supp., 1947).

tion.<sup>24</sup> Actually, the amendment, if it remains in its present form, will be effective as to any future companies coming within its scope. The definition of rule-making in the Administrative Procedure Act appears to cover the amendment here in question. Congress in that Act provided that " 'rule making' means agency process for the formulation, *amendment*, or repeal of a rule."<sup>25</sup> Furthermore, the amendment to Rule U-49(c) is itself a statement that seems to prescribe policy that is to have future effect. Such a statement would apparently come within the meaning of rule as defined by Congress.<sup>26</sup>

The court in the *Philadelphia* case, in an effort to show that it was not clear whether the amendment to Rule U-49(c) was a rule or an order, indicated that the Commission "purported to act under Sections 3(d), 20(a) and 20(c) of the Act which mention both 'rules and regulations' and 'orders.'"<sup>27</sup> This statement is inaccurate as to Section 3(d), which empowers the Commission to make exemptions only by rules and regulations,<sup>28</sup> to the extent that the Commission "deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this chapter."<sup>29</sup> The section appears to require proper balancing of objectives or a choice of methods to achieve given objectives—attributes which have been said to be characteristic of rule-making.<sup>30</sup> Inasmuch as an amendment to a rule seems to be within the Congressional definition of rule making, since the amendment in question was stated in general terms and appears to set up a standard to be adhered to in the future, and inasmuch as it was authorized by a section permitting exemptions by rule and regulation only, one wonders what reasoning would lead a court to determine that the amendment was an order.

The court rested its decision largely upon *Rochester Telephone Corp. v. United*

<sup>24</sup> In *Commonwealth v. Sisson*, 189 Mass. 247, 250, 75 N.E. 619, 621 (1905), the Supreme Judicial Court of Massachusetts stated, ". . . we do not agree that, because it is not a general regulation, it is a judicial action."

<sup>25</sup> 60 Stat. 237 (1946), 5 U.S.C.A. § 1001(c) (Supp., 1947) (italics added).

<sup>26</sup> See note 23 supra for the definition. "The exercise of the administrative rule-making power necessarily looks to the future." *Federal Security Administrator v. Quaker Oats Co.*, 318 U.S. 218, 228 (1943).

<sup>27</sup> *Philadelphia Co. v. SEC*, 164 F. 2d 889, 899 (App. D.C., 1947), cert. den. 68 S.Ct. 452 (1948).

<sup>28</sup> "The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this chapter, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this chapter." § 3(d), 49 Stat. 810 (1935), 15 U.S.C.A. 79c(d) (1941).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Administrative Procedure in Government Agencies: Report of the Committee on Administrative Procedure*, 77th Cong. 1st Sess., at 117 (1941).

*States*,<sup>31</sup> which concerned obedience to the Commission's orders to file schedules of charges and various other information. When the Rochester Corporation neglected to comply with the orders, the Telephone Division of the Communications Commission ordered the corporation to show cause why it should not be required to abide by the orders. Rochester, in reply, claimed to be outside the requirements of the Communications Act. "To ascertain the facts in the contested issue, the Commission appointed a trial examiner. . . . After a thorough hearing and the submission of briefs, the examiner filed his report, to which Rochester duly excepted. Upon the basis of these proceedings and of argument before it, the Commission . . . sustained the finding of its chief examiner. . . ."<sup>32</sup> The Communications Commission, in making its final decision that Rochester was within the requirements of the Act, had to consider the Communications Act along with past and present facts concerning the Rochester corporation. Such a finding would seem to be within the scope of judicial inquiry as defined in *Prentis v. Atlantic Coast Line*: "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist."<sup>33</sup> The procedure of the Communications Commission—appointing a trial examiner and permitting briefs to be submitted—indicated that the Commission deemed the action quasi-judicial.

The very question which the court faced in the *Philadelphia* case was whether the amendment made by the SEC was the result of judicial or legislative action. To solve such a problem by resorting to a case concerned only with judicial action of an administrative body begs the question, for to say that the *Rochester* case is applicable is to say that judicial action of an administrative agency is involved. Nevertheless, the court did cite the *Rochester* case in a statement which seems to assume that if the resultant effect of a procedure in one case is similar to the probable resultant effect of some procedure in another case, the two procedures are the same.<sup>34</sup> This does not appear accurate when it is understood that the purpose of the proceeding in the *Rochester* case was to determine whether an existing act applied to a particular party; such a determination would have future impact upon Rochester only to the extent that adjudication always has such effect by virtue of *res judicata*. On the other hand, the *Philadelphia* case amendment was designed to change the law to enable the SEC better to carry out the objectives laid down in the Holding Company Act; such determination will have future effect because the law is, from the moment the amendment went into effect, a changed law. The court in quoting the *Rochester* case did nothing toward determining whether an order or a rule was involved in the *Philadelphia* case; the opinion merely indicated that whichever it was—

<sup>31</sup> 307 U.S. 125 (1939).

<sup>32</sup> *Ibid.*, at 127.

<sup>33</sup> 211 U.S. 210, 226 (1908).

<sup>34</sup> *Philadelphia Co. v. SEC*, 164 F. 2d 889, 898 (App. D.C., 1947), cert. den. 68 S.Ct. 452 (1948).

a rule or an order—the effect may be similar to the effect which an order had in the *Rochester* case.

The court cited *Columbia Broadcasting System v. United States*<sup>35</sup> to show that a regulation made in accordance with an agency's rule-making power was, in that case, deemed reviewable as an "order" under Section 402(a) of the Federal Communications Act. The regulation of the Federal Communications Commission there involved provided that no license should be granted to a standard broadcasting station which had certain types of contracts with a broadcasting network. The majority opinion recognized that "Most rules of conduct having the force of law are not self-executing but require judicial or administrative action to impose their sanctions with respect to particular individuals."<sup>36</sup> The rule in question, however, was a peculiar one in that it "presently determines rights on the basis of which the Commission is required to withhold licenses and authorized to cancel them. . . ."<sup>37</sup> When the mere promulgation of the regulations and "the expected conformity to them causes injury cognizable by a court of equity, they are appropriately the subject of attack under the provisions of § 402(a). . . ."<sup>38</sup> The regulation was held reviewable because the parties aggrieved could state a cause of action in equity. A proceeding under § 402(a) is "a plenary suit in equity."<sup>39</sup>

Even if a cause of action in equity could be established in the *Philadelphia* case, the court would not have jurisdiction to do the reviewing because "Such jurisdiction as it has, to review directly the action of administrative agencies, is specially conferred by legislation relating specifically to the determinations of such agencies made subject to review, and prescribing the manner and extent of the review."<sup>40</sup> Such an equity suit would have to be brought in a court having general equity jurisdiction. Furthermore, to come within the scope of the *Columbia* case, the Philadelphia Company would have to show that the SEC's amendment caused immediate and irreparable injury. All that the Philadelphia Company can object to is that the reorganization plans of its subsidiary, the Pittsburgh Company, will now have to be approved by the Commission prior to submission to a court, whereas the Commission—before the amendment—had only advisory authority with respect to the reorganization plans. The Philadelphia Company did not show that the Commission will not approve the reorganization plans. If the Commission does approve the plans, there will be no injury; if the Commission does not approve the reorganization plans submitted by the Pittsburgh company, the company will then have opportunity for judicial review of such failure to approve if valid objections can then be demonstrated.

<sup>35</sup> 316 U.S. 407 (1942).

<sup>36</sup> *Ibid.*, at 418.

<sup>37</sup> *Ibid.*, at 421.

<sup>38</sup> *Ibid.*, at 419.

<sup>39</sup> *Ibid.*, at 415.

<sup>40</sup> *AFL v. NLRB*, 308 U.S. 401, 404 (1940).

The court made another argument, based upon Rule U-100(b), which provides that "Any unexecuted transaction which is within the exemption provided in any rule from the requirements of any provision of the Act or of the rules, *may* nevertheless be subjected thereto by *order*, after notice and opportunity for hearing, if it appears to the Commission that the withdrawal of such exemption as applied to such transaction would be appropriate in the public interest of investors or consumers. . . ." <sup>42</sup> The court treated this rule as establishing a mandatory procedure which would require issuance of orders every time exemptions are to be revoked. But the language of the rule seems clearly to set forth an alternative procedure whereby the Commission *may* use orders when it deems their use more feasible than use of the rule-making power. As the Commission pointed out in its brief, "it may be undesirable to complicate the text of rules published for the general use of persons affected by the administration of the Holding Company Act by elaborate exceptions and provisos designed to create specific exceptions." <sup>42</sup> In such cases orders might be superior to rules. Certainly there is nothing in Rule U-100(b) which states that amendment to rules of exemption cannot be made by rule. This being true, it is impossible to follow the court's reasoning that "the Pittsburgh reorganization is an unexecuted transaction, clearly falling as such within the ambit of Rule U-100(b). In view of this and of the plain terms of that rule, it is difficult indeed to give weight to the contention of the Commission in the instant case that its revocatory action in amending Rule U-49(c) is not reviewable because it is a 'rule or regulation' rather than an 'order.'" <sup>43</sup>

The court's argument in this case is not convincing, nor is the argument supplemented by reasons of public policy. Although it appears obvious that the wording of Section 24(a) of the Public Utilities Holding Company Act makes orders reviewable and says nothing about regulations, the court in the *Philadelphia* case made no attempt squarely to face the problem of distinguishing orders from regulations. Congress had policy reasons for refraining from including regulations in Section 24(a). During debate on the Securities Exchange Bill (H.R. 9323) it was said, "It is important that we shall not give exchanges the right to appeal and go into court from the action of the Commission in making rules and regulations. It would subject the Commission to endless harassment. . . . The exchange would not have the right to claim the attention of the court until it claims to be injured by the action of the Commission. If we want regulation, we must give the Commission power to make its action effective." <sup>44</sup> A similar point of view was expressed by the Committee on Administrative Pro-

<sup>42</sup> Rule U-100 (b), General Rules and Regulations under the Public Utility Holding Company Act of 1935, as amended to and including January 1, 1946 (italics added).

<sup>43</sup> Reply Brief for Respondent, in support of Motion to Dismiss, No. 9513 (1947), at 18.

<sup>44</sup> *Philadelphia Co. v. SEC*, 164 F. 2d 889, 901 (App. D.C., 1947), cert. den. 68 S.Ct. 452 (1948).

<sup>45</sup> 78 Cong. Rec. 8090 (1934).

cedure<sup>45</sup> when it stated: "If an administrative agency is best qualified to weigh the facts and opinions that culminate in regulations, its conclusions should be final and it is no anomaly that they are; [but] the legality of *applying* a regulation to a particular party may still be questioned, and the relevant facts shown, in the usual types of judicial proceedings. . . . If a party has no standing whatever, in certain circumstances, to challenge the administrative action, the reason is that under the governing substantive law the action taken is not an infringement of any legal interest of that party."<sup>46</sup>

The opinion in the *Philadelphia* case did not make the court's position clear as to whether the decision rested upon the belief that rules and regulations can be reviewed under Section 24(a) or upon the belief that the amendment in question was an order. If the former is the court's belief, that belief seems clearly to conflict with the language of the statute providing that orders are reviewable, without making any mention of regulations. If the court's belief is that the amendment to Rule U-49(c) was an order, that determination cannot be said to be clearly wrong because the definitions and distinctions in this field are not sufficiently precise to enable one to be certain of any result. However, it is submitted that the court's opinion did not shed light upon the confused and complex considerations with which it was dealing. The court made no effort to clarify the status of an administrative regulation under Section 24(a) of the Public Utilities Holding Company Act. It did not indicate a test for determining when there is an order that is reviewable under that section.

It is submitted that a desirable policy would be to deny reviewability of administrative regulations under Section 24(a). Judicial review of the legality of applying the regulations to a party should be allowed to such party only if he can show that application of the regulation will injure him. There should be no exceptions to this policy. But if a party can show that mere promulgation of a regulation causes him injury, he should have standing in a court of equity to obtain immediate review. This latter situation is demonstrated in the *Columbia* case. Presumably there would be very few regulations which would give rise to review prior to application of the regulation to specific parties.

In the *Philadelphia* case there was no certainty that the complaining company was going to be injured. If such injury becomes apparent when the amendment is enforced, the company will then have its opportunity for a day in court. The decision under discussion was not necessary to protect its rights.

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#### ILLEGALITY PER SE OF PARTIAL EXCLUSION FROM MARKET

The appellant, International Salt Company, owned patents on two machines for utilizing salt products in various industrial processes. It distributed these

<sup>45</sup> A committee appointed by the Attorney General, at the request of the President, to investigate the need for procedural reform in various administrative tribunals and to suggest improvements therein.

<sup>46</sup> Administrative Procedure in Government Agencies: Report of the Committee on Administrative Procedure, 77th Cong. 1st Sess., at 119 (1941).