

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9B020048
v.	:	
	:	Hearing Officer - DMF
JOHN MICHAEL BRACK	:	
(CRD #2792908),	:	HEARING PANEL DECISION
	:	
Orlando, FL	:	
	:	February 7, 2003
	:	
Respondent.	:	

Respondent barred from associating with any NASD member in any capacity for falsifying records of his employer, in violation of Rule 2110, for misrepresenting his employment status on a new account application, in violation of Rule 2110, and for failing to notify his employer, in writing, that he had opened a securities account at another firm and failing to notify the firm at which he opened the account that he was associated with an NASD member, in violation of Rules 3050(c) and 2110.

Appearances

Michael J. Newman, Esq. (Rory C. Flynn, Of Counsel) for the Department of Enforcement.

John Michael Brack, pro se.

DECISION

I. Procedural History

The Department of Enforcement filed a Complaint against respondent John Michael Brack on July 19, 2002. The Complaint charged that Brack falsified a Transaction Pre-Approval Form that his NASD member firm employer required before Brack was allowed to effect any transaction in his personal securities accounts, in violation of Rule 2110; that he misrepresented his employment status on a new account

application he submitted to open a securities account away from his employer, in violation of Rule 2110; and that he failed to give his employer prior written notice of the account and failed to notify the firm at which he opened the account that he was associated with an NASD member, in violation of Rules 3050(c) and 2110. Brack filed an Answer to the Complaint and requested a hearing, which was held on December 19, 2002 before a Hearing Panel composed of a Hearing Officer and two members of the District 9 Committee.¹

II. Facts

A. The Respondent

Brack graduated from college in May 1996 and became associated with NASD member Oppenheimer & Co., Inc. in August 1996. He qualified as a general securities representative in October 1996 and was registered with Oppenheimer in that capacity until March 1997. From March 1997 until March 2001, he was associated with NASD member Datek Online Brokerage Services Corp., initially as a general securities representative and after he qualified as a general securities principal in June 1997 also in that capacity. At Datek, he became a vice president in Datek's Order Facilitation Department, where he supervised up to approximately 20 equity traders. (CX 1, 15 at p. 7; Tr. 84, 163-64, 207-08.)

¹ In this decision, the hearing transcript is cited as "Tr.," Enforcement's exhibits as "CX," and respondent's exhibits as "RX." CX 1-16 and 19 were admitted in evidence (Enforcement did not offer CX 17 or 18), as were RX 2-7 and 9. The Hearing Officer excluded RX 1, which Brack represented was a tape recording of a telephone conversation he had with Enforcement witness James Lopresti. There was no dispute that Brack recorded the conversation without Lopresti's knowledge or consent, and that, therefore, the recording violated Florida law, Fla. Stat. §934.03. Under these circumstances, and taking into consideration that both Brack and Lopresti were available to testify about their various conversations, the Hearing Officer sustained Enforcement's objection to the tape. The Hearing Officer also excluded RX 8, a contested offer of settlement that the Hearing Panel rejected, pursuant to Rule 9270(h).

B. The E*Trade Account

In December 1997, while he was registered with Datek as a representative and principal, Brack opened a securities account with NASD member E*Trade Securities, Inc. On E*Trade's new account application, which Brack signed and dated December 21, 1997, he falsely represented that he was a "Student" and that he was not employed by a registered broker/dealer. Furthermore, Brack did not provide written notice to Datek before opening the account, or written notice to E*Trade that he was employed by a broker/dealer, as required by Rule 3050(c). (CX 2, 15 at p. 9; Tr. 208-09.)

Brack claimed that he filled out the new account application before he graduated from college in May 1996, retained the form for approximately a year and a half, and signed and submitted it to E*Trade in December 1997 without reading it. He admitted that he never gave Datek written notice of the account, but testified that he gave his then-supervisor at Datek supervisor oral notice of the account after he opened it, and that he also gave Brent Houston oral notice when Houston became his supervisor in 1999. He said that Houston agreed he could maintain the E*Trade account to trade options. (CX 15, pp. 9, 13, 17; Tr. 195-96, 203, 208, 214, 234-36, 241.)

Houston, however, denied that Brack gave him oral notice of the E*Trade account. Houston testified, credibly, that if Brack had told him of an outside account, he would have required Brack to report the account to Datek Compliance in writing, as required. Furthermore, Brack's testimony that Houston did not object to the account so he could trade options was not credible, because Brack never applied for options trading authority in the E*Trade account. Enforcement also submitted a written statement by Brack's earlier supervisor that, "to the best of [his] knowledge and recollection," Brack

did not disclose the E*Trade account to him, but one of Brack's former Datek co-workers testified that in 1997 or 1998 he told the supervisor that Brack had an account at E*Trade, and that the supervisor then called Brack aside and spoke to him. By inference, Brack may have orally disclosed the account to the supervisor at that time, but if so the circumstances were hardly favorable to Brack, and there is no evidence that the supervisor conveyed the information to Datek Compliance. (CX 2, 10; Tr. 178-79, 237-38, 266.)

On September 9, 1998, Brack signed a Datek "Annual Compliance Survey." On the Survey he initialed a statement certifying, "Neither I, nor any members of my immediate family have a brokerage account, either with Datek Online or another broker-dealer, for which I have not already gotten Compliance approval." He made similar certifications in his responses to Datek's Annual Compliance Surveys in November 1999 and February 2001. Brack acknowledged that these answers were incorrect, because he had not notified Datek Compliance of his E*Trade account, but said he signed and initialed the Surveys without reading the questions or thinking about his answers. (CX 8, CX 15 at pp. 16-17; Tr. 220-21.)

In late 1998 or early 1999, Datek adopted a written policy governing employee brokerage accounts. The policy indicated that Datek required advance written approval for any employee brokerage account at or away from Datek. The policy warned that employees who opened accounts without prior approval from Datek Compliance would be subject to an automatic 30-day restriction on trading as well as possible disciplinary action, including termination. The policy also warned employees against opening any accounts with false or misleading information, "including but not limited to the omission

of their associated status.” The policy advised employees that if they were allowed to open an account away from Datek, the Compliance Department would require duplicate confirmations and account statements from the other firm. Finally, the policy stated that, although employees would be permitted to open “traditional” accounts away from Datek, they would be allowed to open on-line accounts only at Datek. In April 1999, Brack signed a “Statement of Understanding” confirming that he had read and understood the policy statement. Nevertheless, he did not notify Datek Compliance of his account at E*Trade, or arrange for E*Trade to send copies of his confirmations and account statements to Datek Compliance. (CX 5, 6; Tr. 87-91, 210-11, 218, 249-50.)

C. The Falsified Transaction Approval Form

In January 2000, Datek adopted an addendum to its employee brokerage account policy covering employees in certain areas of the firm, including the firm’s Order Facilitation Department, where Brack served as a vice president. The addendum required that all covered employees obtain advance written permission for any opening transaction trade “in any account (whether at Datek or any other firm).” In addition, Order Facilitators, such as Brack, were required to obtain prior written approval for closing transactions. Specifically, Employees were required to submit a “Transaction Approval Form” to their designated supervisor and to receive written approval on the Form from both the supervisor and Compliance before effecting the trade. (CX 4; Tr. 94-97.)

The addendum warned, “An employee risks losing their investment privileges as well as being subject to other disciplinary action, including termination if the [employee brokerage account] policy and this amendment are not followed.” On February 11, 2000, Brack signed a “Statement of Understanding” acknowledging that he had read and

understood the addendum and would comply with it, and that he had “also disclosed and received approval for any and all accounts, whether at Datek or any other firm, that my immediate family or I have.” In spite of this, Brack did not disclose his E*Trade account to Compliance and he continued to trade in that account without submitting Transaction Approval Forms and obtaining prior written permission for the trades, as required by the addendum. Brack testified he did not know the policy required advance approval for trades in accounts away from Datek, and that he had signed the form certifying that he had read and understood the policy without, in fact, reading or understanding it. (CX 3, 4, 6; Tr. 97-100, 210.)

Brack also had a personal account at Datek. On December 29, 2000, he purchased 100 shares of Intel in that account without submitting a Transaction Approval Form and obtaining the required prior approvals. This came to light in March 2001, when a Datek Compliance person reviewing Brack’s Datek account statements noted the trade but was unable to find a corresponding Transaction Approval Form in Compliance’s files. She contacted the office of Houston, who was responsible for approving Brack’s trades, to see whether there was a copy of a Form for the trade in his files. His assistant did not find a copy in Houston’s files, so she asked Brack whether he had one. Brack called to James Lopresti, a young clerk in his department, and asked him to get a copy of the Form from Brack’s personal file. Lopresti returned with a photocopy of a completed Form relating to the trade. Brack’s signature on the Form was dated December 28, 2000, the day before the trade, and the Form appeared to have (undated) approval signatures from Houston and Compliance, as required. (CX 9, 11, 16; Tr. 103-05, 173.)

The Form that Lopresti produced, however, raised a number of concerns. Portions of the Form, including the number of the account in which the trade would be effected, were not completed; Houston's signature was not dated; the Compliance person whose signature appeared on the Form was not authorized to approve transactions for Datek officers, such as Brack; and there were no "fax stamp" lines at the top of the Form, which would have indicated that the Form had been faxed back and forth between Houston and Compliance. All of this was inconsistent with usual practice. Furthermore, Houston's handwritten name and signature appeared "smudged," as though they had been copied from another Form. And of course, neither Compliance nor Houston's office was able to find a copy of the Form in the appropriate file. (CX 9, 11, 16; Tr. 105-07, 159, 170-71, 174-75.)

In light of these concerns, Houston called Brack into his office and told Brack he believed that someone had falsified his signature on Brack's Form. According to Houston, Brack told him that he had purchased stock on December 29, but had forgotten to obtain the required pre-approval. Brack said that the following day (a Saturday) he realized his error and on the next business day (which would have been January 2, 2001) he told Lopresti to "take care of it." Brack said he "thought he had an idea" how Lopresti had "taken care of it," but would give Houston no details. (CX 11; Tr. 176-77.)

Datek Compliance subsequently began an investigation and spoke to Lopresti. Initially, Lopresti denied knowing anything about the Form, but later said that he had falsified Brack's Form using a photocopy of Houston's name and signature and Compliance's approval from a Form that had been approved for a different transaction in another employee's account. Lopresti claimed he had done this with Brack's knowledge

and at his direction – indeed that he had been threatened or pressured by Brack. Datek subsequently terminated Lopresti. (Tr. 33, 36, 114-16, 155-57.)

Datek Compliance also discussed the Form with Brack. Brack denied knowing anything about the Form being falsified. He claimed he had completed his portion of the Form and given it to Lopresti to pass along to Houston’s office for the appropriate approvals. He said he had no involvement in falsifying the Form. (Tr. 110.)

During its investigation relating to the Form, Compliance learned that Brack might have an undisclosed account away from Datek. When questioned, Brack denied that he had such an account, but Compliance had an outside firm run a check for accounts held by Brack and discovered the E*Trade account. Datek subsequently terminated Brack’s employment, citing his failure to disclose the E*Trade account to Datek and failure to disclose his association with Datek to E*Trade, as well as the fact that he had provided a late Transaction Pre-Approval Form “with superimposed approval signatures.” (CX 1, p. 3; Tr. 102, 111-12, 158, 184.)

Upon receiving the Form U-5 from Datek terminating Brack’s registration, NASD staff opened an investigation, which led to the filing of the Complaint. During the course of the investigation, the staff sought information from Lopresti, but he would not cooperate. In the Summer of 2002, shortly before Enforcement filed its Complaint, however, Lopresti contacted Enforcement and provided a new version of the events surrounding the Transaction Approval Form. In this version, Lopresti claimed that he had no involvement in falsifying the Form. Instead, after the trade, Brack simply gave him a fully completed copy of the Form, including purported signed approvals from

Houston and Compliance, and asked him to put a copy in Brack's personal file and to retain a copy in his (Lopresti's) file, as well. (CX 13; Tr. 40-41.)

Lopresti claimed, however, that Brack called him at home late on the day he met with Houston. Brack said he (Brack) might be in trouble because he had submitted the Form, and Houston had approved it, after the trade, instead of prior to the trade as required under Datek's policy. Brack asked him to tell Datek Compliance that the Form had been processed and approved prior to the trade, as required. According to Lopresti, when he was questioned by Compliance the next day, he was unwilling to do as Brack had asked, and instead told Compliance that he probably had seen the Form but was not certain, because he had handled hundreds of them. (CX 13; Tr. 32-33.)

Lopresti said that, subsequently, Brack admitted that he (Brack) had altered the Form, using signatures photocopied from an approved Form. Brack told Lopresti that if Datek discovered that, he would be fired, so he asked Lopresti to "take the fall for the forgery." Brack told Lopresti that because Lopresti was still in school, he would not suffer as much as Brack would, and he offered to get Lopresti an attorney. Lopresti agreed, because he felt he owed Brack for getting him his job and for helping collect contributions from other traders to pay Lopresti's college tuition. Lopresti did not claim that Brack threatened him, but said he felt "pressured." He acknowledged, however, that when Compliance questioned him he did not simply take the fall. Instead, Lopresti told Compliance he had falsified the Transaction Pre-Approval Form on Brack's orders. Lopresti said that he was unwilling to take all the blame, but felt that by giving Compliance this story, he would "get ... the worst of it, and Mr. Brack would be able to keep his job." (CX 13; Tr. 34-36, 50, 65-66.)

After Lopresti gave Enforcement a declaration setting forth this version of the events, he was able to settle NASD charges that he had failed to timely respond to staff requests for information, receiving as sanctions a one year suspension and a fine, due and payable if he returns to the securities industry. He was not charged or sanctioned for having any role in falsifying the Form. At the hearing, Lopresti's testimony was consistent with the version of the events he gave Enforcement, rather than his earlier statements to Datek Compliance. (Tr. 30-40, 64-66.)

Brack's story was simpler, though not more convincing. He testified that he simply forgot to submit a Transaction Approval Form for approval in advance of the December 29, 2000 trade, as required. Over the following weekend, he realized this, and the next trading day he filled out his portion of the Form and handed it to Lopresti to give to Houston for approval. Brack said that he was not concerned about submitting the Form late, because he knew other Datek employees had filed late Transaction Approval Forms without getting into trouble. He did not know that the approvals on the Form were falsified; he neither asked Lopresti to falsify the approvals nor did it himself; and he could offer no reason why Lopresti would have done it on his own. (CX 15, pp. 19-20; Tr. 223-25, 233-34, 252.)

III. Discussion

A. The E*Trade Account

To maintain integrity in their dealings with the investing public, NASD members must monitor the personal securities transactions of their associated persons. To facilitate this, Rule 3050(a) requires any NASD member that "knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another

member [to] use reasonable diligence to determine that the execution of such transaction will not adversely affect the interests of the employer member.” Further, a member who knows that a person associated with another member will have a financial interest in an account must notify the employer member prior to executing any transactions in the account and, upon request, must transmit duplicate copies of confirmations and account statements to the employer member. It is particularly important that members receive this information regarding the transactions of employees, such as Brack, who are engaged in trading.

To ensure that firms will be able to identify the persons who are subject to this monitoring scheme, Rule 3050(c) requires that “[a] person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member” Brack admits he did not do this when he opened his E*Trade account. As a result, E*Trade did not notify Datek of the account or send it copies of his confirmations and account statements, and Datek was unable to monitor his trading activity. Thus, Brack violated Rule 3050(c), and, by violating that Rule, also violated the general requirement in Rule 2110 that NASD members and associated persons “observe high standards of commercial honor and just and equitable principles of trade.”

Brack did not just fail to provide the written notifications required by Rule 3050(c); he affirmatively misrepresented his employment status on the new account application he submitted to E*Trade, falsely claiming that he was a student and that he was not employed by a broker/dealer. Brack’s testimony at the hearing that he filled out

the new account application before he graduated from college, retained it for approximately a year and a half, and signed and submitted it to E*Trade without reading it was not believable. As Brack said during his testimony, “You’re just getting out of college. The last thing you want – you don’t keep papers.” And even if Brack had retained a completed new account application, it is not credible that he failed to see the two clear, handwritten references to “Student” just above the line on which he signed the application. Further, Brack’s story at the hearing was inconsistent with his testimony during the investigation. At that time, when he was asked about the new account application, he said nothing about having filled it out while he was a student. Instead, he said he was “young, stupid” when he completed the new account application, and that he “didn’t think [he] was going to be at Datek too long [because he] thought [he] was going to go back to school to get [his] master’s.” This explanation was far more credible than his testimony at the hearing. (CX 15 at pp. 29-30; Tr. 210.)

Finally, although the evidence suggests that Brack deliberately misrepresented his status on the new account application, even if he was merely careless that would not excuse his actions. When he signed the new account application, he was a registered representative and principal; he should have known how important it was for him to complete the application accurately, including disclosing his status as an associated person.

The Hearing Panel therefore finds that by falsely representing on the E*Trade new account application that he was a student and was not employed by a broker/dealer, Brack violated Rule 2110.

B. The Falsified Transaction Approval Form

The Transaction Pre-Approval Form was unquestionably falsified. In addition to all the circumstantial indications that the Form was not submitted and approved in accordance with normal practices, it is apparent from a close examination of the Form itself that the portion supposedly reflecting Houston's and Compliance's approval was copied from another Form. Indeed, during its investigation Datek identified a specific Form, which had been approved for a trade in another Datek employee's account, from which the signatures were copied. Houston's signature and printed name and the signature of the Compliance reviewer are identical on the two Forms, except that the very top of Houston's signature on Brack's Form is clipped off where, on the original Form, it extended up into the employee's signature line. It is apparent from this that the Form that had been approved for the other employee's trade was photocopied, the portion reflecting the approval of Houston and Compliance was cut from the copy (clipping off the very top of Houston's signature), the cut-off portion was affixed to Brack's Form, and Brack's Form, with the falsified approvals affixed, was photocopied and placed in Brack's personal file. (CX 16, 19; Tr. 108.)

The only issue is Brack's involvement in this process. Lopresti changed his story too many times for his most recent version to be entirely credible. Among other things, his current claim that he had nothing to do with falsifying the Form, but agreed to "take the fall" to protect Brack, is inconsistent with his actions. When questioned by Datek Compliance, he did not protect Brack, but rather said that he had falsified the Form at Brack's direction. He told NASD a different story – that Brack falsified the Form

without his assistance – when that served his own interests in obtaining a favorable settlement with NASD.

Brack's testimony, however, was no more credible than Lopresti's. The record in this proceeding is replete with misrepresentations by Brack. He admits he misrepresented his employment status when he opened the E*Trade account; according to his own testimony at the hearing, he falsely certified that he had read and understood Datek's policy and amendment regarding employee brokerage accounts; when questioned by Datek Compliance he denied having an E*Trade account; and although he now admits he completed the Transaction Pre-Approval Form after the trade, he back-dated the Form to December 28, 2000, so that it would appear he submitted it the day before the trade, as required.

With this record, it is impossible to credit his testimony that he had nothing to do with falsifying the Transaction Pre-Approval Form. Either Brack falsified the Form or Lopresti did. If it was Lopresti, Brack must have known. Unless Brack asked Lopresti to falsify the Form, there was no reason for Lopresti to do it; even Brack could suggest none. Brack's evasive answers when Houston first questioned him offer additional support for the Panel's conclusion that, at a minimum, Brack was aware that the approvals on his Transaction Pre-Approval Form were falsified.²

Finally, Brack's story is undermined by a pattern of attempting to avoid responsibility for his actions through misrepresentations and denial. He claims that he

² Brack's testimony that he simply gave the Form to Lopresti to pass along to Houston for approval is not credible. Brack knew that he had violated Datek's written policies by failing to obtain prior approval for the trade; that he had back-dated the portion of the Form he had completed; and that the Form, submitted late and back-dated, would have to be approved by both Houston and Compliance. Under these circumstances, if Brack had intended to obtain belated approval, he would have taken the Form to Houston himself, with an explanation and a plea for lenient treatment.

never read the various materials that he signed, and was unaware of Datek's policies, such as the requirement that he give Compliance written notice of his outside account. During his testimony, however, in the midst of these denials, there was a moment of candor. In explaining his failure to disclose his E*Trade account, Brack admitted, "I guess at that point it did become a fear factor. Okay. It was fine for this long and now what happens now?" The same sort of fear may have led him to falsify the Transaction Pre-Approval Form, directly or with Lopresti's help, rather than admit he had violated Datek's policy by effecting a trade without obtaining advance approval.

In any event, regardless what his motivation may have been, the Hearing Panel finds, by a preponderance of the evidence, that Brack either falsified the Form himself, or induced Lopresti to do it. In either case, his actions violated Rule 2110.

IV. Sanctions

For violations of Rule 3050, the Sanctions Guidelines recommend, in egregious cases, a suspension of up to two years or a bar, as well as a fine. NASD Sanction Guidelines at p. 21 (2001 ed.). The specific considerations listed in the Guidelines focus on whether the transactions in the undisclosed account presented real or perceived conflicts of interest or involved "hot issues" (there is no evidence of either circumstance in this case) or whether the respondent provided oral notice to the employing firm or the executing firm, and whether the employer orally acquiesced. In this case, Brack claims he gave oral notice to his supervisor around the time he opened the account, and again to Houston when Houston became his supervisor. For reasons described above, the Hearing Panel finds that Brack's claim that he gave Houston oral notice is not credible. In light of the testimony from Brack's former co-worker, however, the Panel accepts, for purposes

of imposing sanctions, that Brack provided some sort of belated oral notice to the former supervisor, when the supervisor inquired.

Nevertheless, the Hearing Panel has determined that Brack's violation was egregious. Brack did not simply fail to disclose the E*Trade account to Datek and his associated person status to E*Trade. In his new account application, he lied to E*Trade about whether he was employed by a broker/dealer, which prevented E*Trade from notifying Datek of the account. He also falsely denied having an unreported outside account in a series of Datek Annual Compliance Surveys. And he denied having an E*Trade account when he was questioned during Datek's investigation of the falsified Transaction Pre-Approval Form. All of these circumstances are highly aggravating. By itself, therefore, this violation supports barring Brack from any association with any NASD member.

Brack's misrepresentations on the E*Trade new account application are closely related to his failure to disclose the account. The most analogous Guideline for this violation is for "Forgery And/Or Falsification of Records," which recommends consideration of a bar, as well as a fine, in egregious cases. NASD Sanction Guidelines at p. 43. The Panel finds that this is an egregious case. As explained above, the information that Brack misrepresented was critically important. If he had answered the questions truthfully, E*Trade would have notified Datek; because he misrepresented his status, E*Trade did not notify Datek and Datek was unable to monitor his trading in the E*Trade account. Brack's misrepresentations were either deliberate, which is most probable, or at least reckless. In either case, Brack's actions show that he is so heedless

of his obligations as a registered representative and principal that he must be barred to protect the investing public.

The Guideline for “Forgery And/Or Falsification of Records” also applies to the falsification of the Transaction Pre-Approval Form. The Form was central to Datek’s efforts to monitor trading by employees such as Brack. While the particular trade that Brack effected without pre-approval (the purchase of 100 shares of Intel) was not significant, his willingness to falsify the Form, alone or with Lopresti’s help, was deliberate and egregious. To maintain the integrity of the securities industry, registered representatives and especially registered principals must accept responsibility for their actions. Brack has shown he is unwilling to do that. As a result, he would pose a serious risk to the investing public if he were allowed to associate with an NASD member.

V. Conclusion

Respondent John Michael Brack is barred from associating with any NASD member in any capacity for: (i) falsifying a Transaction Pre-Approval Form required by his employer, in violation of Rule 2110; (ii) misrepresenting his employment status on a new account application, in violation of Rule 2110; and (iii) failing to notify his employer, in writing, that he had opened a securities account at another firm and failing to notify the firm at which he opened the account that he was associated with an NASD member, in violation of Rules 3050(c) and 2110. The bars shall become effective immediately if this decision becomes the final disciplinary action of NASD.

In light of the bars, no fines are imposed. However, Brack is ordered to pay costs in the amount of \$2,428.05, which includes an administrative fee of \$750 and hearing

transcript costs of \$1,678.05. These costs shall be due on a date set by NASD, but not sooner than 30 days after this decision becomes the final disciplinary action of NASD.³

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Copies to: John Michael Brack (via overnight delivery and first class mail)
Michael J. Newman, Esq. (electronically and via first class mail)
Rory C. Flynn, Esq. (electronically and via first class mail)

³ The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.