UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **GLENN B. LAKEN,** **Registrant.**	)))))))	**CFTC Docket No. SD 00-05**

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INITIAL DECISION

Appearances:

On Behalf of the Division of Enforcement:

David M. Cole, Esq.

Scott R. Williamson, Esq.

On Behalf of the Registrant:

Ted S. Helwig, Esq.

Christian T. Kemnitz, Esq.

Steven B. Nagler, Esq.

Before: Painter, A.L.J.

PRELIMINARY STATEMENT

The Commodity Futures Trading Commission ("Commission") commenced this action against Glenn B. Laken ("Registrant") on June 19, 2000 by issuing the Notice of Intent to Suspend or Modify Registration Pursuant to Section 8a(11) of the Commodity Exchange Act, As Amended ("Notice of Intent"). In their Notice of Intent the Commission alleges that the Registrant has been charged with at least eleven federal felonies in two indictments, United States v. Laken, et. al., 00 CR 651 (S.D.N.Y.) and United States v. Lino, et. al., 00 CR 632 (S.D.N.Y.). The indictments against the Registrant include allegations of illegal pension kickbacks, racketeering, wire fraud, securities fraud, and stock promotion fraud. The Commission asserts that the continued registration of the Registrant "may pose a threat to the public interest or may threaten to impair the public confidence in the markets regulated by the Commission" and therefore the Registrant is "subject to having his registration suspended or modified under Section 8a(11)(A) of the [Commodity Exchange Act]."[1]

On July 10, 2000 the Registrant filed with this Court the Registrant's Response to Notice of Intent to Suspend or Modify Registration and Request for Oral Hearing("Registrant's Response to Notice of Intent to Suspend or Modify"). In the aforementioned filing, the Registrant admits to being charged in the indictments with at least eleven federal felonies and further admits that these felonies involve violations of federal law that are punishable by a term of imprisonment exceeding one year.[2] While

[1] Notice of Intent to Suspend or Modify, June 19, 2000, pg. 2.

[2] *See* Registrant's Response to Notice of Intent to Suspend or Modify, July 10, 2000, pg. 2.

the Registrant previously denied that the crimes alleged reflect on his honesty and integrity to act as a fiduciary,[3] he has apparently changed this position and in the Registrant's second proposed finding of fact the Registrant concedes that "[t]he nature of the crimes alleged in the indictments are the type of crimes that reflect on the honesty of Laken and his ability to act as a fiduciary." The Registrant asserts that the continued registration of Registrant does not pose a likely threat to the public interest or threaten to impair public confidence in markets regulated by the Commission.[4]

The Registrant requested an oral hearing for this matter and the request was granted. The hearing was held on August 28, 2000 at Suite 1600 North, 300 South Riverside Plaza, Chicago, Illinois.

On September 18, 2000 this Court received proposed findings of fact and conclusions of law from both the Division of Enforcement ("DOE") and the Registrant. This matter is now ready for decision.

FINDINGS OF FACT

1. The Registrant, Glenn B. Laken, resides at 2423 Egandale Road, Highland Park, Illinois, 60035. (*See* Registrant's Response to Notice of Intent to Suspend or Modify, July 10, 2000, pg. 1.)

2. The Registrant was registered with the Commodity Futures Trading Commission during the relevant time period. (*See* Commission records.)

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[3] *See* Id.

[4] Id.

3. The Registrant has been named as a defendant in two indictments filed by the United States Attorney for the Southern District of New York. The indictments are entitled United States v. Laken et. al., 00 CR 651 (S.D.N.Y.) and United States v. Lino, et. al., 00 CR 632 (S.D.N.Y.). (DOE Exhibits 1 and 2)

4. The Registrant is charged with the commission of, or participation in, violations of federal laws that include: securities fraud, wire fraud, commercial bribery, illegal pension kickbacks, racketeering, and stock promotion fraud. (*See* DOE Exhibits 1 and 2.)

5. The nature of the crimes alleged in the indictments are the type of crimes that reflect on the honesty of the Registrant and his ability to act as a fiduciary. The crimes alleged in the indictments are punishable by imprisonment for a term exceeding one year. (*See* 18 U.S.C. § 1954 (2000), 18 U.S.C. § 1343 (2000).)

6. The Registrant was a respondent in CFTC docket number 90-R124. By Initial Decision issued May 8, 1991, it was found that the Registrant and respondent First Commercial Financial Group, Inc. cheated and defrauded a customer in violation of Section 4b of the Commodity Exchange Act. (*See* BAS Investments, Inc. v. Glenn B. Laken and First Commercial Financial Group, Inc., 1991 WL 99061 (C.F.T.C.).) The Registrant and First Commercial Financial Group, Inc. paid damages, interest and attorney's fees, in the amount of $349,522.13 to satisfy the judgment. (*See* Commission records.)

7. The Business Conduct Committee of the CME found that Laken had engaged in prearranged trading on March 12, 1990. (*See* DOE Exhibit 7.)

8. The testimony given on behalf of the Registrant by character witnesses, as to the Registrant's honesty and integrity, was neither persuasive nor credible. Four of the six

witnesses were potentially biased as personal friends of the Registrant. (*See* Hearing Transcript ("Tr.") 10: 8, 14: 24, 22: 16, 36: 16-17, 44: 6.) Not one of the character witnesses testified that he had actually read the indictments (*See* Tr.14: 12-13, 20: 15-16, 30: 20-21, 37: 7-8, 45: 6-7, 56: 1-13.) and as a result, the witnesses appeared to be uninformed as to the exact nature and extent of the indictments against the Registrant. However, each witness filed a written statement that he was aware that the indictments included allegations of racketeering, payment of illegal kickbacks, wire fraud, theft of a broker's services, and securities fraud. (*See* Registrant's Exhibit 10.) The witnesses testified that they were unaware of the previous disciplinary and legal actions against the Registrant both at the CME and before the Commodity Futures Trading Commission. (*See* Tr.12: 21-24, 17: 11-22, 23: 13-15, 26: 4-14, 32: 4-24, 33: 1-3, 34: 17-20, 38: 14-16, 39: 23-24, 40: 1-2, 48: 7-10, 49: 10-17, 49: 10-17, 86: 14-16, 87: 10-21, 88: 8-15.) Upon being informed of the Registrant's previous disciplinary and legal history not one of the witnesses altered his opinion of the Registrant. (*See* Tr. 18:3-6, 26:15-23, 33:11-12, 34:21-23, 39:12-14, 40:3-5, 49:18-20, 91:9-22.) This Court concludes that the witnesses were neither credible nor persuasive.

DISCUSSION

In order to suspend a Registrant the Commodity Futures Trading Commission must issue written notice to the Registrant pursuant to Section 8a(11)(A) of the Act (7 USC §12a(11)(A) (1999)). The Division of Enforcement must show that the Registrant is charged with "the commission of or participation in a crime involving a violation of [the Commodity Exchange] Act, or a violation of any other provision of Federal or State

law."[5] The violation must "reflect on the honesty or the fitness of the person to act as a fiduciary" and be "punishable by imprisonment for a term exceeding one year."[6] Finally, the Commission may issue notice to suspend or modify the registration of the registrant "if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission."[7]

Written notice to suspend or modify the Registrant's registration was properly served in this matter. As noted in finding of fact number three, the indictments naming the Registrant as a defendant include charges of illegal pension kickbacks, racketeering, wire fraud, securities fraud, and stock promotion fraud. These allegations reflect on the honesty and integrity of the Registrant and, if proven, may result in a term of imprisonment exceeding one year. In light of the quantity and quality of the allegations in the indictments, this Court has no doubt that the Commission acted within its authority when it determined that continued registration of Laken may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

Prior to suspending or modifying the registration of a person under paragraph 8a(11)(B) (7 USC § 12a(11)(B) (1999)) "the person shall be afforded an opportunity for a hearing."[8] The Division of Enforcement has the burden of showing that the "continued registration of the person does, or is likely to, pose a threat to the public interest or

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[5] Commodity Exchange Act 8a(11)(A), 7 USC § 12a(11)(A) (1999).

[6] Id.

[7] Id.

[8] Section 8a(11)(B) of the Act, 7 USC § 12a(11)(B) (1999).

threaten to impair public confidence in any market regulated by the Commission."[9] The hearing for this matter was held on August 28, 2000 at Suite 1600 North, 300 South Riverside Plaza, Chicago, Illinois. At the hearing the DOE placed in evidence the two Grand Jury indictments authorized by a United States Attorney.[10]

The Registrant may be suspended if his continued registration threatens to impair the public's confidence in any market (in the matter at hand that market is the CME) regulated by the Commission.[11] Once the indictments were admitted into evidence the DOE effectively satisfied their burden of persuasion. Although the indictments contain only allegations of criminality, a grand jury found that there was probable cause to believe that the Registrant had committed the crimes that are the bases for these allegations. Furthermore, the indictments are known to the public and therefore have an effect on public perception beyond the actual threat posed by the Registrant.[12] Allowing a Registrant to continue to trade on the CME floor, after that Registrant has been indicted on charges of securities fraud and other financially related malfeasance, has the effect of associating the CME with individuals the public may not trust. The notoriety associated with the indictments may impair the public's confidence in the CME.

The Registrant has admitted in his proposed finding fact that he is named in the indictments and that the crimes alleged reflect on the Registrant's honesty and his ability

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[9] Id.

[10] *See* Tr. 5:15-20.

[11] *See* Section 8a(11)(B) of the Act, 7 USC § 12a(11)(B) (1999).

[12] In an analogous action brought by the FDIC suspending a Bank officer based on his indictment, the Supreme Court made clear that, "the return of the indictment itself is an objective fact that will in most cases raise serious public concern that the bank is not being managed in a responsible manner." 486 U.S. 230, 244-5 (1988).

to act as a fiduciary. Instead of suspension, the Registrant proposes that his registration be modified to allow him to trade for his own account under supervision.[13] The Registrant asserts that his continued registration does not threaten to impair public confidence in the CME if such a modification is undertaken. In order to bolster his claims the Registrant had six witnesses testify as to his honesty and integrity. The Registrant also cites his self-imposed restrictions and the CME's willingness to allow him to trade for his own account,[14] in support of his argument for modification of his registration.

The witnesses in this matter lacked credibility and accordingly their testimony is given little weight in the adjudication of this matter. Four of the witnesses are personal friends of the Registrant[15] and may have been biased in their testimony on his behalf. Michael Dowd, the witness selected as the supplemental supervisor for the Registrant, admitted that he and his firm had a pre-existing business relationship with the Registrant. This business relationship raises questions concerning Dowd's motivations for testifying, and his fitness to serve as a supplemental supervisor. Dowd stated under oath that Laken is "a very, very good client of First Options, and he's introduced a lot of business to us."[16] The financial interests of Dowd, both in having done business with the Registrant in the past and in potentially benefiting by doing business with the Registrant in the future, makes Dowd a poor candidate for supplemental supervisor.

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[13] *See* Registrant's Exhibit 17.

[14] *See* Id. at 3-7.

[15] *See* Tr. 10: 8, 14: 24, 22: 16, 36: 16-17, 44:6.

[16] Tr. 55: 15-16.

The testimony given in this matter suffers from significant deficiencies. The witnesses in this matter testified that they had not read the indictments prior to their testimony.[17] This collective omission diminishes the value of their testimony. At the hearing for this matter the witnesses were informed of past disciplinary and legal difficulties of the Registrant.[18] After learning of the Registrant's history not one witness testified to a change in their opinion of the Registrant.[19] This Court accords little weight to the testimony of these individuals.

The CME's decision to allow the Registrant to continue to trade for his own account does not sufficiently protect the exchange from the potential loss of public confidence. It is surprising that the CME is willing to allow Laken to continue to trade on the floor of the exchange given the CME's role as guardian of its own reputation for trustworthiness. This Court finds the CME's prophylactic measures to be insufficient in these circumstances. In light of the gravity of the offenses charged, this court has no alternative but to suspend the Registrant in order to protect the CME from the potential loss of public confidence.

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[17] *See* Tr. 14:12-13, 20:15-16, 30:20-21, 37:7-8, 45:6-7, 56:1-13.

[18] In November of 1990 the CME Business Conduct Committee found that Laken had engaged in prearranged trading (DOE Exhibit 7). Laken was found guilty of violating section 4b of the Act by fraudulently inducing individuals to make investments. (BAS Investments, Inc. v. Glenn B. Laken and First Commercial Financial Group, Inc., 1991 WL 99061 (C.F.T.C.)) The findings of fraudulent inducement were summarily affirmed by both the Commission (BAS Investments, Inc. v. First Commercial Financial Group, Inc., et al., 1992 WL 139592 (C.F.T.C.)) and again affirmed by the United States Court of Appeals for the Second Circuit in an Amended Order filed on December 21, 1992.

[19] *See* Tr. 18:3-6, 26:15-23, 33:11-12, 34:21-23, 39:12-14, 40:3-5, 49:18-20, 91:9-22.

CONCLUSIONS OF LAW

This court has carefully reviewed the indictments, pleadings and oral arguments of the parties, and finds that the continued registration of the registrant constitutes a threat to the public interest, and may threaten to impair public confidence in a market regulated by the Commission.

ORDER

Pursuant to the provisions of Section 8(a)(11) of the Act, 7 USC § 12a(11), and Commission regulation Section 3.56, 17 C.F.R. § 3.56, the registration of Glenn B. Laken is SUSPENDED pending further action by the Commission.

So Ordered

Issued October 17, 2000

George H. Painter
Administrative Law Judge

Michael J. Alamo, Law Clerk