

provides that the time limit applies even in the case of “fraud, mistake, or excusable neglect.”⁴ Word’s request falls within the plain language of the rule.⁵ Further, Word has provided no support or authority for our having an ability to waive the time limit – nor have we independently found any.⁶

⁴ 17 C.F.R. §12.23(b).

⁵ Federal courts have an almost identical rule – Fed. R. Civ. Pro. 60(b) & (c). Though there is some argument about whether the time limit is jurisdictional or procedural, there is no argument that it must be enforced. Indeed, the Federal Rules expressly provide that “[a] court must not extend the time to act under Rule... 60(b).” Fed. R. Civ. Pro. 6(b)(2). *E.g., McKnight v. Neven*, 366 Fed.Appx. 841, 842-43 (9th Cir. 2010):

Thus, regardless of whether the one-year limit is ‘jurisdictional,’ it must be strictly enforced. Given the plain meaning of Rule 6(b)(2), the district court did not err in concluding that it lacked discretion to bend the one-year limit to treat McKnight’s Rule 60(b) motion as timely.

Id.

⁶ In stark contrast to the federal courts and federal rules, the Commission has given itself the authority to waive any rule it wants – including this one. See 17 C.F.R. §12.4(b). Rule 12.4(b) provides that for “...good cause the Commission . . . may waive any rule in the Part . . . upon a determination that no party will be prejudiced thereby and that the ends of justice will be served.” *Id.* It seems clear that this generic waiver rule cannot be applied to this time limit; obviously, a complainant is “prejudiced” when a long-standing default is vacated. However, the Commission apparently disagrees, and has previously used the rule to waive the time limit at issue – while ignoring the contrary language about “no party being prejudiced thereby.” See *Hess v. Mount*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,039 at 37,884 (CFTC Apr. 17, 1991) (*holding* that “[w]hile a strict application of Rule 12.23(b) would foreclose granting the relief Mount now seeks, our rules also empower us to waive its provisions for good cause in a particular case in order to serve the ends of justice. We do so now....”). Thus, it appears the *Commission* can waive the deadline – should it so choose.

We therefore **DENY** Word's motion to set aside the default judgment.

IT IS SO ORDERED.

On this 6th day of May, 2011

A handwritten signature in black ink, appearing to read "Bruce C. Levine". The signature is written in a cursive style with a horizontal line underneath it.

Bruce C. Levine
Administrative Law Judge