

Regulation FD Enforcement Action Brought Against CEO Who Reaffirmed Earnings Guidance and Director of Investment Relations Who Said Nothing

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On March 24, 2005, the SEC filed and settled an enforcement action against Flowserve Corporation (of Irving, Texas), its CEO, and its Director of Investor Relations, charging them with violating Regulation FD by reaffirming earlier earnings guidance in a private meeting with analysts.

The case was the first ever brought under Regulation FD for reaffirming earnings guidance and the first settled enforcement action against an investor relations director for violating the regulation. All three defendants consented to the entry of a cease-and-desist order. The company agreed to pay \$350,000 in civil penalties, and the CEO agreed to pay \$50,000.

In its order, the Commission found that the company's reaffirmation of its earlier public earnings guidance was material nonpublic information. The CEO reaffirmed the guidance in response to a question during a private meeting with analysts that occurred less than one month after the published guidance and about six weeks before the end of the company's fiscal year. The Director of Investor Relations remained silent, but the Commission found him culpable for failing to caution the CEO against answering the question.

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