CORRECTED

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51427 / March 24, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11872

In the Matter of **FLOWSERVE CORPORATION,** **C. SCOTT GREER, and** **MICHAEL CONLEY,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Flowserve Corporation, C. Scott Greer, and Michael Conley (collectively "Respondents").[1]

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over each of them and the subject matter of these proceedings, the Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

---

[1] In addition, the Commission has contemporaneously filed a complaint in the United States District Court for the District of Columbia charging Flowserve with violating, and charging Greer with aiding and abetting Flowserve’s violations of, Exchange Act Section 13(a) and Regulation FD and seeking civil penalties. Without admitting or denying the Commission's allegations, the Defendants have consented to the entry of a final judgment by the Court that would require Flowserve to pay a $350,000 civil penalty and Greer to pay a $50,000 civil penalty. <u>See</u> SEC v. Flowserve Corporation and C. Scott Greer, Case No. 1:05CV00612 (D.D.C.) (filed March 24, 2005), Lit. Rel. No. 19154 (March 24, 2005).

III.

FACTS

On the basis of this Order and the Respondents' Offers, the Commission finds that:

A. Respondents

Flowserve Corporation ("Flowserve" or the "Company") is a New York manufacturer of precision-engineered flow control equipment, headquartered in Irving, Texas. The Company's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on the New York Stock Exchange.

C. Scott Greer ("Greer"), age 54, is currently a Texas resident. Greer has been Flowserve's President since 1999, and Flowserve's CEO and Chairman of the Board since 2000.

Michael Conley ("Conley"), age 50, is currently a resident of Texas. Conley is Flowserve's Director of Investor Relations. Conley was the principal author of Flowserve's Regulation FD policy. At all relevant times, Conley has been, and remains, the person responsible for its implementation.

B. Summary

On November 19, 2002, Flowserve's Chairman, Chief Executive Officer, and President, C. Scott Greer, along with Flowserve's Director of Investor Relations, Michael Conley, met privately in Irving, Texas with analysts from four investment and brokerage firms. During the meeting, Greer, with Conley present, reaffirmed the Company's previously-disclosed full 2002 earnings guidance and provided additional material nonpublic information to these analysts.

Late on November 20, 2002, one of the analysts released a report that highlighted Flowserve's reaffirmation of its earnings guidance and electronically distributed it to Thomson Financial subscribers of First Call. The next day, on November 21st, Flowserve's closing stock price was approximately 6% higher than the closing price the day before. In addition, the trading volume of Flowserve's stock increased by 75%, from 379,500 shares traded on November 20th to 658,300 shares traded on November 21st. After the market closed on November 21st, Flowserve furnished a Form 8-K admitting that it had selectively disclosed information to analysts.

C. Background

Since as early as 1999, Flowserve has had a disclosure policy. The 2001 version of the policy mandated a specific response to questions regarding earnings guidance. Subsequent to a public announcement of earnings and other guidance, if asked about the Company's level of "comfort" with the guidance, Company spokespersons were to respond in the following manner: "Although business conditions are subject to change, in accordance with Flowserve's policy, the current earnings guidance was effective at the date given and is not being updated until the company publicly announces updated guidance." This policy was in effect throughout 2001 and 2002.

Flowserve, a calendar-year reporting corporation, began 2002 forecasting annual earnings per share in the range of $1.90 to $2.30. In July of that year, the Company revised that estimate to $1.70 to $1.90 per share. On September 27th, the Company lowered its earnings estimate to $1.45 to $1.55 per share, which the Company reaffirmed in its press release issued on October 22, 2002. The $1.45 to $1.55 range represented more than a 30% decline in earnings per share estimates since the beginning of the year.

On November 18th and 19th, 2002, Flowserve hosted a private analyst event in Irving, Texas, including a private meeting with Flowserve executives and a plant tour on the 19th. Analysts from four investment and brokerage firms attended the event. Prior to the meeting on the 19th, Conley did not caution the analysts as to what topics were off limits for the purposes of their discussions with Greer.

On the morning of November 19th, forty-two days before the end of Flowserve's fiscal year, the analysts met with Greer and Conley; Flowserve's CFO, joined the meeting later. During the meeting, the attendees discussed various aspects of Flowserve's business, including recent acquisitions, debt covenants, and free cash flow. At one point, one of the analysts asked about the Company's earnings guidance for the year. Neither Conley nor Greer gave the response required by the Company's policy that earnings guidance was effective at the date given and would not be updated until the company publicly announced updated guidance. Conley did not caution Greer before Greer answered the analyst's questions. In fact, Conley remained altogether silent. Instead, in response to the question, Greer reaffirmed the previous guidance, which had been issued on October 22nd and provided additional material nonpublic information. Having heard the exchange between Greer and the analyst, again Conley was silent and did nothing to explain Greer's statements. Conley also failed to reiterate the Company policy as to earnings guidance.

The following day, on November 20th, an analyst who attended the meeting issued a report to the investment firm's subscribers stating that Flowserve reaffirmed its earnings guidance. The analyst's report lists the reaffirmation as the second of its five "Key Points" on the Company. In addition, the reaffirmation is the subject of the first substantive paragraph in the section of the report entitled "Discussion." The report was electronically distributed to subscribers of Thomson's First Call. Conley read the analyst's report the next day.

On November 21st, Flowserve's closing stock price was approximately 6% higher than the closing price the day before. In fact, the greatest differential in Flowserve's stock price was nearly 9%, from a low of $13.33 on November 20th to a high of $14.50 on November 21st. In addition, the trading volume of Flowserve's stock increased by 75%, from 379,500 shares traded on November 20th to 658,300 shares traded on November 21st, after the dissemination of the analyst's report.

After the market closed on the 21st, Flowserve furnished a Form 8-K stating that earlier in the week, the Company met with analysts and reaffirmed its full-year earnings estimates.[2] The Form 8-K reads:

> During a conversation this week with securities analysts, Flowserve Corporation reaffirmed its full year 2002 estimated earnings per share, excluding special items, in the range of $1.45 to $1.55, based on average outstanding shares of approximately 52.5 million. The company also reiterated that it is not comfortable at this point projecting more than marginal earnings improvement in 2003, unless markets start to improve. The company went on to say that it believes its markets will improve.

The next day, Flowserve's stock closed at $14.30, the same closing price as the day before, and trading volume decreased by nearly 25%, from 658,300 shares traded on November 21st to 497,900 shares traded on November 22nd.

IV.

LEGAL ANALYSIS

Flowserve's Primary Violation of Regulation FD and Exchange Act Section 13(a)

Regulation FD prohibits an issuer, or persons acting on its behalf, from selectively disclosing material, nonpublic information to certain persons outside the issuer. Regulation FD identifies those outside persons as: (1) broker-dealers and their associated persons; (2) investment advisers, certain institutional investment managers, and their associated persons; (3) investment companies, hedge funds, and their affiliated persons; and (4) any holder of the issuer's securities under circumstances where it is reasonably foreseeable that such a person would purchase or sell securities on the basis of the information.

Regulation FD distinguishes between "intentional" selective disclosures and "non-intentional" selective disclosures. A selective disclosure is "intentional" when the person making the disclosure knows, or is reckless in not knowing, that the information being communicated is both "material" and "nonpublic." Information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or if the information would significantly alter the total mix of available information. Information is nonpublic if it has not been disseminated in a manner making it available to investors generally.

When an issuer, or person acting on its behalf, discloses material, nonpublic information to outside persons, Regulation FD requires public disclosure of that information by the issuer. Issuers can make public disclosure for purposes of Regulation FD by filing or furnishing a Form 8-K, or by disseminating information through another method, or combination of methods, of disclosure

[2] The Form 8-K was furnished on November 21, 2002, at 5:16:43p.m. This is more than 53 hours after the actual selective disclosure and nearly 26 hours after dissemination of the analyst's report.

that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public. As a general matter, acceptable methods of public disclosure for purposes of Regulation FD will include press releases distributed through a widely circulated news or wire service, or announcements made through press conferences or conference calls that interested members of the public may attend or listen to either in person, by telephonic transmission, or by other electronic transmission (including use of the Internet).

Section 13(a) of the Exchange Act requires issuers of securities registered under Section 12(b) to file with the Commission certain reports and other information, including Form 8-K filings. Thus, if an issuer fails to comply with Regulation FD, that issuer would also violate Section 13(a).

As described above, Flowserve Corporation, through its CEO, Greer, intentionally and selectively disclosed material, nonpublic information to securities market professionals when, on November 19th, 2002, Greer disclosed Flowserve's continued confidence in its earnings guidance during a private meeting with select analysts. As a result of the facts described above, the Commission finds that Flowserve violated, and Greer and Conley were each a cause of Flowserve's violations of, Exchange Act Section 13(a) and Regulation FD.[3]

V.

In view of the foregoing, the Commission deems it appropriate to accept the Respondents' respective Offers and to impose the sanctions specified therein.

Accordingly, it is hereby ORDERED**:**

Pursuant to Section 21C of the Exchange Act, that Respondent Flowserve cease and desist from committing or causing any violations and any future violations of Exchange Act Section 13(a) and Regulation FD, and that Respondents C. Scott Greer and Michael Conley each cease and desist from causing any violations and any future violations of Exchange Act Section 13(a) and Regulation FD.

By the Commission.

Jonathan G. Katz
Secretary

[3] In addition to the underlying conduct, the Commission considered the Respondents' lack of cooperation afforded the Commission staff. Specifically, both Greer and Conley denied that a reaffirmation occurred at the meeting, which is inconsistent with the Form 8-K.