SEC Settles "Record Penalty" Reg FD Case

As I've been covering the SEC doing this blogging thing for quite a while now, I can tell you on good authority that the SEC's Enforcement Division has averaged roughly one Reg FD case per year since FD was adopted in the year 2000. The latest Reg FD action came a few days ago when the SEC **announced** that it had settled charges for alleged violations of Reg FD in the amount of $6.25 million, which the **SEC's press release** states is a "record penalty" since it's the largest ever in a Reg FD case.

This case involved the type of situation that led the SEC to adopt Reg FD in the first place, allegations of one-on-one "projected and actual financial results" disclosures by several company investor relations executives to a bunch of Wall Street research analysts. In addition to the company paying the record penalty, three company executives agreed to pay $25,000 each to settle charges.

The company argued that the investor relations team was pointing analysts to disclosures already made by the CFO about expected trends for the company's business. But the summary judgment opinion issued in September reflected that the executives disclosed specific nonpublic metrics in the one-on-one conversations that caused the analysts to reduce their forecasts for the company. This case was headed to trial in court as directed by a federal judge but settled before it got there.

This case is a strong reminder to companies of the risks of walking analysts up or down in one-on-one meetings. If the street is missing the story the company is trying to convey, the place to clarify needs to be a Reg FD-compliant presentation.

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