

# Compliance & Ethics Professional

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## Congratulations, Brian!

an interview with Brian Patterson  
the 6,000<sup>th</sup> person actively certified by the CCB

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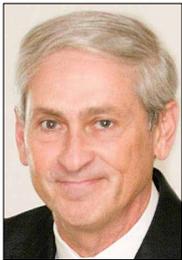
**Ethics & Compliance  
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A pioneering model**

Aley Raza

by Jeffrey M. Kaplan

# A recent win for compliance programs

**R**egulation Fair Disclosure (Reg FD) prohibits selective disclosure of material, non-public information belonging to public companies. Violations of the regulation can lead to fairly stiff penalties for culpable individuals and organizations.



Kaplan

But, at least in some circumstances, a company can avoid charges in this area by showing that it had strong Reg FD compliance measures in place at the time of the violation.

The first publicly reported instance of this was in *Securities and Exchange Commission v. Christopher A. Black*,<sup>1</sup> where a company's chief financial officer was charged with violating the rule, but the company was given a "pass" by the Commission (SEC). Among the reasons offered for this happy ending: The company had, prior to the offense, "cultivated an environment of compliance by providing training regarding the requirements of Regulation FD and by adopting policies that implemented controls to prevent violations."

More recently, a former head of investor relations of First Solar Inc. was charged with a Reg FD violation.<sup>2</sup> As described by the SEC, the executive had "indicated in phone conversations with some analysts and investors that the company was unlikely to receive a much-anticipated loan guarantee from the U.S. Department of Energy. When First Solar broadly disclosed this material information in a press release the next morning, its stock price dropped 6 percent."

Once again, the charges were brought against the individual only. The company was not charged, due to its "extraordinary cooperation with the investigation among several other factors." Most important for C&E professionals was the SEC's noting that the company had, prior to the violation, "cultivated an environment of compliance through the use of a disclosure committee that focused on compliance with Regulation FD." The decision to proceed against the individual alone was also based on how First Solar responded to the breach: It promptly issued a press release the next morning, before the market opened. First Solar then quickly self-reported the misconduct to the SEC. Concurrent with the SEC's investigation, First Solar undertook remedial measures to address the improper conduct. For example, the company conducted additional Regulation FD training for employees responsible for public disclosure. While not posing the same level of risk that most corruption or antitrust cases do, Reg FD violations can be harmful to a company's reputation—particularly among its shareholders. For this reason, it may be helpful to use the recent Reg FD cases in training board members and senior managers on the importance of compliance programs in general. \*

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1. Case No. 09-CV-0128 (S.D. Ind., September 24, 2009 available at <http://1.usa.gov/1aUrNUf>)
2. "SEC Charges Former Vice President of Investor Relations With Violating Fair Disclosure Rules." 2013-174 Washington DC, Sept. 6, 2013. Available at <http://1.usa.gov/17vZBde>