

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70337 / September 6, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15458**

**In the Matter of**

**LAWRENCE D. POLIZZOTTO**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING CIVIL PENALTIES AND A CEASE-AND-DESIST ORDER**

**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 Lawrence D. Polizzotto (“Polizzotto” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Civil Penalties and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

On September 21, 2011, Polizzotto, the former head of investor relations for First Solar, Inc. ("First Solar"), selectively disclosed to approximately 20 sell-side analysts and institutional investors that First Solar would not receive a significant loan guarantee from the U.S. Department of Energy ("DOE") it and industry analysts had previously anticipated the company would receive. Polizzotto also directed a subordinate to make similar calls, and provided the subordinate with a list of talking points. The next morning, First Solar publicly disclosed the loss of the DOE loan guarantee and its stock price dropped by 6%. As a result of his conduct, Polizzotto caused First Solar's violation of Section 13(a) of the Exchange Act and Regulation FD promulgated thereunder.

#### Facts

1. First Solar is a Delaware corporation headquartered in Tempe, Arizona. The company manufactures and sells solar modules. It also designs, constructs, and sells complete solar power systems. The company's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on The NASDAQ Stock Market LLC under the trading symbol FSLR.
2. Respondent Polizzotto, is a resident of Arizona, and was First Solar's vice president of investor relations between April 2008 and November 2011. He was also a member of First Solar's Disclosure Committee, which among other things, focused on compliance with Regulation FD.
3. At all relevant times, Polizzotto was authorized by First Solar to speak on its behalf to investors, analysts, and other securities professionals, and was aware that Exchange Act Regulation FD [17 C.F.R. §§ 243.100, *et seq.*] prohibited him from selectively disclosing material nonpublic information to one party that was not publicly disclosed to all.
4. In June 2011, First Solar received conditional commitments from the DOE for loan guarantees of approximately \$4.5 billion relating to three separate First Solar projects: Antelope Valley Solar Ranch 1 ("AVSR"), Desert Sunlight, and Topaz Solar ("Topaz"). The loan guarantees were important to First Solar because they would allow the company to receive guaranteed low-cost financing from the federal government. However, each of the guarantees was

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

conditioned upon First Solar meeting several requirements prior to September 30, 2011, the last day on which the DOE could make the loan guarantees.

5. Between June and September 2011, analysts wrote numerous reports speculating as to whether First Solar would be able to meet the September 30 deadline with respect to all three loan guarantees. Most analysts believed the company would meet the deadline for AVSR and Desert Sunlight, but the Topaz loan guarantee was the subject of more discussion because it had more regulatory hurdles to overcome prior to September 30. Topaz was also the largest of the three projects, having received a conditional \$1.93 billion loan guarantee commitment.

6. On September 13, 2011, Polizzotto attended an investor conference with First Solar's CEO at the time. During the conference, First Solar's CEO publicly expressed confidence that the company would receive all three loan guarantees.

7. On September 15, 2011, Polizzotto and several other executives learned that the DOE had decided not to provide a loan guarantee with respect to the Topaz project. The group of employees responsible for public disclosure regarding the DOE loans, including Polizzotto and one of First Solar's in-house lawyers, began discussing how and when the company should disclose the loss of the Topaz loan guarantee.

8. Late on the evening of September 15, in response to questions regarding the timing and content of a press release, the in-house lawyer sent an e-mail to the team, including Polizzotto, which stated the following:

“[I]f we receive a DOE notice tomorrow, we would not have to issue a press release or post something to our website the same day. We would, though, be restricted by Regulation FD in any [sic] answering questions asked by analysts, investors, etc. until such time that we do issue a press release or post to our website (assuming DOE itself doesn't make this notice public). ...”

9. After reading this e-mail and in anticipation of a meeting between a First Solar representative and a DOE representative to discuss the Topaz situation, Polizzotto sent an internal email that included the following statements:

“They [the DOE] need to recognize we are a public company and this is a material event for us. If they notify us of this without the other 2 approvals it will create huge concern to the investment community. We need them to communicate the whole picture with other 2 at the same time. ...”

10. Between Friday, September 16, and Wednesday, September 21, First Solar continued to work on the timing and content of the Topaz press release. The company also coordinated with the DOE to allow it to review the release.

11. On September 20, the U.S. House of Representatives' Committee on Energy and Commerce sent a letter to the DOE (the “Congressional Inquiry”) inquiring about its loan guarantee program and the status of the guarantees that had not yet been closed, including all three

of First Solar's conditional guarantees. This event caused concern within the solar industry regarding whether the DOE would be able to move forward with its conditional loan guarantee commitments. On the morning of September 21, First Solar's stock dropped at the open by more than \$6 (or approximately 8%), from \$79.21 to below \$73. In addition, analysts began issuing research reports about the Congressional Inquiry, and Polizzotto began receiving numerous calls from analysts and investors.

12. When Polizzotto arrived at work on the morning of September 21, he knew the Topaz press release had not yet been issued, and found out shortly thereafter that it would not be issued until the following morning. Nevertheless, he drafted several Topaz-related talking points, which he and a subordinate investor relations employee delivered to more than 30 analysts and investors with whom they spoke that day. The talking points indicated that there was a higher probability the company would receive the loan guarantees for AVSR and Desert Sunlight, and a lower probability the company would receive the Topaz guarantee. As part of the "high probability/low probability" message, Polizzotto reminded analysts and institutional investors of previously-disclosed facts about Topaz that shed a negative light on the project, such as permitting obstacles, pending litigation, and a need to secure financing. The message effectively signaled that, contrary to the message that had been delivered by First Solar's CEO at a conference the prior week, the company no longer believed it would receive the Topaz guarantee. In addition, Polizzotto referred to a rumor that had been circulating regarding a potential Topaz buyer. According to the rumor, which First Solar had not publicly confirmed, a large energy company was in discussions with First Solar regarding the purchase of the Topaz project and could provide financing at a very low cost of capital, thereby significantly reducing the negative effect of not receiving the DOE loan guarantee.

13. In addition, in certain discussions, Polizzotto went further than his "high probability/low probability" message, and told at least one analyst and one institutional investor that if they wanted to be conservative, they should assume First Solar would not receive the Topaz loan guarantee.

14. In some instances, immediately after speaking with Polizzotto, analysts e-mailed the equity sales teams within their organizations with the message that they expected First Solar to receive two out of the three loan guarantees.

15. On the evening of September 21, First Solar's management learned from a news article that Polizzotto may have selectively disclosed the Topaz information to certain analysts and investors. As a result, they finalized their plans regarding the Topaz press release and issued it prior to the opening of the market on September 22. The company's stock opened that morning at \$68.95, down 6%.

16. As a result of the conduct described above, Polizzotto caused a violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. §§ 243.100 *et seq.*] promulgated thereunder, by First Solar in connection with the selective disclosure of material nonpublic information described above.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Lawrence D. Polizzotto's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Lawrence D. Polizzotto cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Regulation FD promulgated thereunder.

B. Respondent shall pay a civil money penalty of \$50,000 to the United States Treasury. Payment shall be made in the following installments: \$25,000.00 within 10 days of the entry of this Order; and \$25,000.00 within 365 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lawrence D. Polizzotto as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lorraine B. Echavarria, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, CA 90036.

By the Commission.

Elizabeth M. Murphy  
Secretary