FREE KIC NO. 32 JUNE 08

GOING BANNANAS

Jim Flavin has just resigned as executive chairman of DCC and it was probably one of those situations where if he had not resigned he would have been fired.
I only met Jim Flavin once back in 1999 when a few members of the Setanta Asset Management team went out to the DCC head office to talk about strategy.
The one thing I do remember him saying at the time was that the stake in Fyffes was non strategic and at the right price they would be a seller. I was therefore not surprised that they sold their stake during the dotcom boom.
In fact around that time a former colleague of mine who was working as a stock broking analyst rang me up to discuss how to value the Fyffes internet venture, World of Fruit. This makes me believe that the Fyffes share price was heavily influenced by the dotcom mania. I do accept however that the underlying banana business could not be ignored.
The media have commented extensively on DCC so I don't think that I can add much to that debate but I do want to comment on the role of Fyffes and the Fyffe's directors in this saga.
The Supreme Court reached the conclusion that Jim Flavin was in possession of price sensitive inside information when Lotus Green sold shares in Fyffes on February 3rd 2000. I would have thought that it would be logical to conclude that all other directors of Fyffes were therefore in possession of that information on the same date. In fact the information referred to was the internal management accounts that had been distributed in January.
The board of directors finally issued a profit warning on March 20th.
If you accept the Supreme Court decision I think that it is logical to conclude that Fyffes should have issued the profit warning immediately they received the management accounts in January. The end result was a false market until March 20th. In my opinion anyone that bought shares in this time period should be seeking compensation from Fyffes.
Carl McCann was a director of Fyffes in 2000 and is now chairman of Fyffes spinoffs Total Produce and Blackrock International Land. He was centrally involved in the High Court and Supreme Court cases. He had possession of the same price sensitive information. He did not issue a profit warning. Should there not be questions as to his suitability to remain as chairman of two publicly quoted companies? Should there be leader articles in all the broadsheet newspapers? Should the IAIM (Irish Association of Investment Managers) investigate? As far as I can see, none of the above is happening. I did a quick search and all I could find was the following written by Vincent Browne in the Sunday Business Post back on January 15th 2006:

Not only did Fyffes not tell the stock exchange what the internal documents showed about the first quarter, but it gave contrary signals to the market. Fyffes was giving presentations in Dublin, London, Europe and the US about how well the company was performing. However, Fyffes permitted one of its own directors to trade in shares during this time and it arranged share options for the company secretary.

why was a profit warning not issued on January 25, since Fyffes thought the information it had was price sensitive?

He returned to the same subject in an article written on November 18th 2007:

Some Fyffes directors egged on Flavin at the time - and, indeed, celebrated the successful sale of the first raft of DCC shares with champagne at a hotel near Dublin airport.

More than that, the Fyffes directors also granted potentially lucrative share options to the company secretary and a director around the same time that the DCC sale occurred.

Indeed, some of these senior Fyffes people were around the world on a roadshow advertising how splendidly Fyffes was doing, thereby encouraging people and institutions to buy shares, knowing that things were doing rather less splendidly.

I have not been able to find any articles that suggest Carl McCann should suffer the same fate as Jim Flavin.(I know Vincent Browne has written further articles in his Village magazine but I am not going to pay get access to this "premium" content)
In the court case Carl McCann admitted that he had made a mistake by letting one director sell shares at the time but as far as I can see there has been absolutely no penalty for making that mistake.
I am not a legal expert so I do not know if there are any penalties that can be imposed against the parties involved but at a minimum I would hope that the media would at least highlight the situation.
In conclusion I am "going bananas" because it appears that certain Fyffes directors might get away with it!


Carl McCann