

Name: Alert ID: TMML2024039950278 FOR IMMEDIATE RELEASE 2003-69 -- The Securities and Exchange Commission today filed securities fraud charges against Martha Stewart and her former stockbroker, Peter Bacanovic. The complaint, filed in federal court in Manhattan, alleges that Stewart committed illegal insider trading when she sold stock in a biopharmaceutical company, ImClone Systems, Inc., on Dec. 27, 2001, after receiving an unlawful tip from Bacanovic, at the time a broker with Merrill Lynch, Pierce, Fenner & Smith Incorporated. The Commission further alleges that Stewart and Bacanovic subsequently created an alibi for Stewart's ImClone sales and concealed important facts during SEC and criminal investigations into her trades. In a separate action, the United States Attorney for the Southern District of New York has obtained an indictment charging Stewart and Bacanovic criminally for their false statements concerning Stewart's ImClone trades. The Commission seeks, among other relief, an order requiring Stewart and Bacanovic to disgorge the losses Stewart avoided through her unlawful trades, plus civil monetary penalties. The Commission also seeks an order barring Stewart from acting as a director of, and limiting her activities as an officer of, any public company. Stewart has been Chairman and Chief Executive Officer of Martha Stewart Living Omnimedia, Inc. Stephen M. Cutler, the SEC's Director of Enforcement, said: "It is fundamentally unfair for someone to have an edge on the market just because she has a stockbroker who is willing to break the rules and give her an illegal tip. It's worse still when the individual engaging in the insider trading is the Chairman and CEO of a public company." Wayne M. Carlin, Regional Director of the Commission's Northeast Regional Office, said: "The Commission simply cannot allow corporate executives or industry professionals to profit illegally from their access to nonpublic information. The coordinated action announced today by the U.S. Attorney's Office shows that the consequences for those individuals will be even greater if we uncover evidence that they obstructed our investigation." Stewart's Dec. 27, 2001, ImClone sales came as ImClone and the market anxiously awaited an imminent decision from the Food and Drug Administration on one of ImClone's key products, a cancer treatment called "Erbix." Bacanovic's unlawful inside tip was that other Bacanovic clients — ImClone's CEO, Samuel Waksal, and Waksal's daughter — had just placed orders to sell all the ImClone stock they held at Merrill Lynch. At the time, Waksal secretly knew that the FDA was about to reject ImClone's Erbix application. Information about the Waksals' efforts to sell was confidential under Merrill Lynch policies, which prohibited employees from disclosing client transactions or effecting client trades on the basis of other client transactions. Had information about the Waksals' efforts to sell been known publicly, it would have signaled insider pessimism at ImClone about the FDA decision, the prospects for Erbix, and the future of the company, according to the complaint. The Commission alleges that, during the morning of Dec. 27, 2001, Bacanovic instructed his assistant, Douglas Faneuil, to tell Stewart that Waksal and his daughter were selling all the ImClone stock held in their Merrill Lynch accounts. During a subsequent telephone call, Faneuil conveyed that information to Stewart, who promptly instructed Faneuil to sell all 3,928 shares of her ImClone stock. The next day, Dec. 28, 2001, ImClone announced that the FDA had decided not to accept ImClone's Erbix application for filing. By the close of the next trading day, Monday, Dec. 31, 2001, the price of ImClone stock dropped 16% to \$46 per share. By selling when she did, Stewart avoided losses of \$45,673. The Commission alleges that Stewart and Bacanovic went on to lie when the Commission staff and criminal authorities questioned them about the facts surrounding Stewart's sale of ImClone stock. Stewart and Bacanovic fabricated an alibi for Stewart's trades, stating that she sold her ImClone stock because she and Bacanovic had decided earlier that she would sell if ImClone's stock price fell below \$60 per share. In addition, Stewart told the government that she did not recall anyone telling her that day that any of the Waksals were selling their ImClone stock. Pursuant to a separate Commission order issued this morning, the Commission has barred Faneuil from association with a broker, dealer, or investment adviser. The Commission acknowledges the assistance of the U.S. Attorney's Office for the Southern District of New York and the Federal Bureau of Investigation in the investigation of this matter. Contact: Wayne M. Carlin (646) 428-1510 Barry W. Rashkover (646) 428-1856 See Also: Litigation Release 18169; Complaint