

Supreme Prosecutors Office News Release



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1. In December 2012 the Special Investigation Division (“SID”) of the Supreme Prosecutors Office received a public member complaint regarding fraud involving the four major governmental funds. Investigations by the prosecutors found that the fraud involved more than NT\$3.8 billion, and is a special and significant case that required the investigation and prosecution of insider trading as well as breach of fiduciary duty in the fully fiduciary discretionary investment of governmental funds in Taiwan. The responsible prosecutors reported the case to Prosecutor-General Huang on October 9, 2013, designating it as a matter to be investigated by the Special Investigation Division pursuant to the Court Organization Act. On October 11, 2013 the prosecutors concluded the investigations by indicting Chen O and Qu O-chen for breach of fiduciary duty under the Criminal Code, and violation of the Securities and Exchange Act.
 2. Facts of the Indictment:
 - (1) Chen O is a fund manager of Ri O Investment and Trust’s Accounts Management Department, and was the supervisor of said department from June 1, 2012 until February 28, 2013. Qu O-chen was formerly a fund manager of Bao-O Investment and Trust, responsible for handling mutual fund investments; on December 6, 2007 he was transferred to the company’s Fully Fiduciary Discretionary Investments Department as its deputy general manager/investment manager, responsible for handling fully fiduciary discretionary investments.
 - (2) Breach of Fiduciary Duty
 - a. Ri O Investment and Trust, Yuan OOO Investment and Trust

and various other securities investment, trust and consulting companies won the first contract for fully fiduciary discretionary investment of the old-system labor retirement fund in Taiwan from September 2007 until January 2011.

- b. Fund managers Chen O and Qu O-chen, during the periods that they were respectively mandated to carry out fully fiduciary discretionary investments in respect of the labor retirement fund, engaged in the following acts in breach of their duties (Chen O from January 13, 2010 until September 25, 2012; Qu O-chen from January 12, 2011 until February 1, 2012) with the intention of deriving personal illegal benefits: (1) front running, that is: placing their own interests before those of the client, by margin buying the several specific securities that their client – the labor retirement fund – planned to buy, and they did so on a long-term basis, in large quantities and on numerous occasions; on the same day or several days later, they would cause the said labor retirement fund investment account to issue an investment decision with a limited order at a higher price (relative to the price at which they had previously bought the same securities), and instruct the traders to order large quantity purchase of said specific securities, or cause other investors to follow; as a result the prices of these securities would generally rise, and they would then immediately instruct sale of the securities; through such highly leveraged financial transactions, they were able to profit from the short-term arbitrage. They derived enormous, illegal gains from these short-term round trips; (2) matched orders, that is: as managers of the labor retirement fund, they were able to attend company morning meetings and other investment-related meetings; or supervisor of the fully fiduciary discretionary investment department, they were able to examine the investment decisions of other fund managers; taking advantage of these opportunities, they gained specific knowledge that other managers of the company's special account investment department or fully fiduciary discretionary investment department intended to buy a certain stock exchange or OTC exchange traded stock on a certain day; or

they would issue investment decisions on behalf of the labor retirement fund they were mandated to operate on a fully discretionary basis, to buy the stock of a certain stock exchange or OTC exchange traded company; at some closely connected time on the same day, they would use some other person's security account to buy the stock at a price lower than or equal to the price at which the governmental fund would buy, and then immediately sell the same stock at the price that was computer-matched. Therefore, during this closely connected period, on one side the governmental funds (such as the labor retirement fund) would commission a buy order, and on the other side the fund manager would use another person's account to sell the same stock, which completed the matched order transactions; (3) when making decisions about using the mandated investment assets to buy certain securities, they had deliberately breached the duties of care and faithfulness of a good faith manager, and the investment analysis reports on which their investment decisions were based were clearly lacking in rational analytical foundation and basis, so that they carried out acts in breach of fiduciary duty that violated the rights and interests of their principal. Below is a description of their respective acts:

c. Chen O

(a) Front running transactions

During the period that Chen O was mandated to carry out fully fiduciary discretionary investment of the labor retirement fund, he would first use another person's account to buy shares at a low price, in large quantities over several trades, and then cause the labor retirement fund to buy the same shares, thereby driving the share price up; once the share price rose to a certain level, he would sell at a high price those shares that he had bought using the other person's account. Chen O bought and sold stock exchange and OTC exchange listed stocks, including stock code 14XX (hereinafter "Tai O Stock") in a highly leveraged manner, almost without

having to invest his own capital, **and derived personal, illegal benefits to the amount of NT\$57,683,718.** He also caused the **investment accounts of the aforementioned new and old system labor retirement funds** invested under his fully fiduciary discretion **to sustain damages to the amount of NT\$238,702,950.**

(b) Matched order transactions

From April 16, 2010 to November 1, 2011, Chen O would cause the governmental fund to issue a buy order on the one hand, and simultaneously use another person's account to issue a sell order on the other hand, thereby deriving illegal benefits. He transacted in 17 stock exchange and OTC exchange listed stocks including Tai O Stock during this period, with total transaction amount of NT\$67,040,250, **causing the governmental funds to sustain damages to the amount of NT\$2,042,079.**

(c) Acts in breach of fiduciary duty without rational analytical foundation and basis: Chen O had acted in violation of the principles of honesty, integrity, good faith management, assurance of security, and investment for profit, **causing the labor retirement funds to sustain damages to the amount of NT\$159,055,355.**

d. Qu O-chen

(a) Front running transactions

From January 14 to August 31, 2011, Qu O-chen used six securities trading accounts of four people including Lin O-xian to issue orders. He would first buy the stocks of 18 stock exchange or OTC exchange listed companies including Xin O, and would then sell all of these individual securities that he had personally purchased in advance once their stock prices rose. Through these highly leveraged transactions, he engaged in short-term arbitrage using such round trips, **and derived personal illegal benefits to the amount of NT\$14,376,040,**

causing the aforementioned **labor retirement fund** (entrusted to him on a fully fiduciary discretionary basis by the trustee, the Labor Pension Fund Supervisory Committee) **to sustain damages in the amount of NT\$48,529,839.**

(b) Matched order transactions

From January 17 to August 30, 2011, Qu O-chen would cause the governmental fund to issue a buy order on the one hand, and simultaneously issue a matching sell order on the other hand, thereby deriving illegal benefits. He transacted in 24 stock exchange and OTC exchange listed stocks including that of Guang O Applied Materials Technology Co., Ltd. (hereinafter “Guang O Tech”) during this period, with total transaction amount of NT\$294,512,300, **causing the governmental funds to sustain damages to the amount of NT\$3,396,065.**

(c) Acts in breach of fiduciary duty without rational analytical foundation and basis: Qu O-chen had acted in breach of his fiduciary duties, contrary to the rights and interests of the trustee, so that the aforementioned **labor retirement fund he was mandated to invest on a fully fiduciary discretionary basis had sustained damages to the amount of NT\$378,436,664.**

(3) Acts of Insider Trading

a. Chen O

During the period that Chen was mandated to carry out investments of the aforementioned labor retirement fund on a fully fiduciary and discretionary basis – that is from January 13, 2010 to September 17, 2012, he would use the securities trading account of Wu O-yin to issue telephone trade orders, buying the stocks of 29 stock exchange or OTC exchange listed companies including Tai O Stock before the aforementioned news that would significantly affect share prices were made public, **so that investors sustained**

damages to the amount of NT\$2,895,031,827.

b. Qu O-chen

During the period that Chen was mandated to carry out investments of the aforementioned labor retirement fund on a fully fiduciary and discretionary basis – that is from January 12 to September 16, 2011, he would use Skype to contact Ouyang O-jia to issue trade orders, using the securities trading accounts of four people including Ouyang O-juan to buy the stocks of 16 stock exchange or OTC exchange listed companies including Xin O before the aforementioned news that would significantly affect share prices were made public, **so that investors sustained damages to the amount of NT\$119,861,756.**

3. Seizure of Illegal Income

Illegal income and assets of fund managers Chen O and Qu O-chen were seized, being NT\$300,000 in cash, NT\$28,000,000 in bank deposits, stocks (the above being in respect of Chen O), NT\$6,930,000 in bank deposits, and an apartment residence in Neihu, Taipei City.

4. Application of the Law

The defendants Chen O and Qu O-chen are indicted for breach of fiduciary duty under Article 342, Paragraph 1 of the Criminal Code, and insider trading under Article 172, Paragraph 1, Subparagraph 1 of the Securities and Exchange Act.