

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6139 / September 20, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21113

In the Matter of

TOEWS CORPORATION

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Toews Corporation (“Toews” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions 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 that:

Summary

Toews, a registered investment adviser, repeatedly violated the Advisers Act by casting proxy votes in connection with over two hundred shareholder meetings on behalf of registered investment companies ("RICs") that it managed without taking any steps to determine whether the votes were cast in those clients' best interests, and without implementing policies and procedures reasonably designed to ensure that Toews voted proxies in its clients' best interests. Over a multi-year period beginning in 2017, Toews directed a third-party service provider it engaged to vote client proxies to always vote all of the RICs' securities in favor of the proposals put forth by the issuers' management and against any shareholder proposals. During this period, Toews caused the third-party service provider to vote the RICs' securities pursuant to this standing instruction without exception and without any review by Toews of the proxy materials associated with those votes. As a result, Toews violated Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-6 promulgated thereunder, commonly referred to as the Proxy Voting Rule.

Respondent

1. Toews has been registered with the Commission as an investment adviser since 1994 and is a Delaware corporation, with its principal place of business in Northfield, New Jersey. According to its Form ADV filed on June 7, 2022, Toews manages approximately \$1.26 billion in assets and advises eight RICs.

Facts

2. In its Form ADV Brochures that were in effect during the relevant period, Toews asserted that "[a]s an adviser to our mutual fund programs and the Fund, we act as a fiduciary. We will vote proxies in the best interests of our clients." Additionally, Toews' Policies and Procedures Manual in effect during this period stated the following:

As to each Fund, . . . Toews exercises its proxy voting rights with regard to the companies in that Fund's investment portfolio, with the goals of maximizing the value of the Fund's investments, promoting accountability of a company's management and board of directors to its shareholders, aligning the interest of management with those of shareholders, and increasing transparency of a company's business and operations.

...

Proxy voting is an important right of shareholders and reasonable care and diligence must be undertaken to ensure that such rights are properly and timely exercised.

3. Notwithstanding the foregoing statements in its Form ADV Brochures and Policies and Procedures Manual, Toews voted the RICs' proxies without taking any steps to determine whether the votes were cast in those clients' best interests and without implementing policies and procedures reasonably designed to ensure that Toews voted proxies in its clients' best interests, as required by the Advisers Act.

4. Toews engaged a third-party service provider to vote proxies on behalf of the RICs. From January 2017 through January 2022, Toews directed the service provider to vote all of the RICs' securities pursuant to a standing instruction for every vote. According to Toews' standing instruction, Toews' third-party service provider was to always vote the RICs' securities in favor of the proposals put forth by the issuers' management and against any shareholder proposals, and the service provider did so without exception during the relevant period.

5. Although Toews retained the ability to direct the service provider to vote other than in accordance with this standing instruction with respect to any given vote or proposal or to alter any votes already cast by the service provider prior to the voting deadline, Toews never deviated from the standing instruction and did not review the proxy materials for any of the more than 200 shareholder meetings as to which it cast votes in this manner during the relevant period. Nor did Toews otherwise take steps to determine whether such votes were being cast in the RICs' best interests or implement any policies and procedures reasonably designed to ensure that it did so.

6. As of January 2022, Toews has revised its proxy voting policies and procedures to address the issues raised by the facts described above.

Violations

7. As a result of the conduct described above, Toews willfully¹ violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-6 promulgated thereunder. Section 206(2) of the Advisers Act makes its "unlawful for any investment adviser . . . to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Section 206(4) of the Advisers Act makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative" and Rule 206(4)-6 thereunder requires registered investment advisers to "[a]dopt and implement written policies and procedures that are reasonably designed to ensure that [the adviser] vote[s] client securities in the best interest of clients."

¹ "Willfully," for purposes of imposing relief under Section 203(e), "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Toews cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-6 promulgated thereunder.

B. Toews is censured.

C. Toews shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) 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
- (3) 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

E. Payments by check or money order must be accompanied by a cover letter identifying Toews Corporation 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 Thomas P. Smith, Jr., Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary