

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6581 / April 3, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21900

In the Matter of

Senvest Management, LLC,

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 Senvest Management, LLC (“Senvest,” the “firm,” 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. Respondent admits the facts set forth in Section III, below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. The federal securities laws impose recordkeeping requirements on registered investment advisers to ensure that they responsibly discharge their crucial roles in our markets. The Commission has long said that compliance with these requirements is essential to investor

protection and to the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. These proceedings arise from widespread and longstanding failures by employees throughout Senvest to adhere to certain of these recordkeeping requirements, and certain provisions of the firm's written policies and procedures and code of ethics.

2. From at least January 2019 through December 2021, Senvest employees at various levels of authority communicated about Senvest-related business internally and externally using personal texting platforms and other non-Senvest electronic communication services ("off-channel communications") in violation of the firm's policies and procedures. As a result, Senvest did not keep the substantial majority of these communications, including communications that it was required to keep under the Advisers Act.

3. Senvest supervisors, who were responsible for preventing such conduct by junior employees and for implementing the firm's policies and procedures, also discussed Senvest business using off-channel communications. For example, three senior employees engaged in such discussions on personal devices set to automatically delete messages after 30 days. These automatic deletions prevented Senvest from recovering certain messages that it was required to keep under the Advisers Act and the firm's policies and procedures.

4. During this period, Senvest responded to record requests and document subpoenas from the Commission. The firm's recordkeeping failures could have impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws.

5. Certain Senvest employees also failed to adhere to provisions of the firm's code of ethics requiring them to obtain pre-clearance for all securities transactions in their personal accounts. Senvest supervisors failed to ensure that certain required personal-trading reviews were timely conducted in compliance with the firm's pre-clearance policy.

6. By failing to keep communications as required by the Advisers Act, implement the firm's policies and procedures, and enforce its code of ethics, Senvest violated Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204-2(a)(7), 204A-1, and 206(4)-7 thereunder. And by failing to implement its policies and procedures and to enforce its code of ethics, Senvest failed reasonably to supervise its employees within the meaning of Section 203(e)(6) of the Advisers Act.

Respondent

7. Senvest is a Delaware limited liability company with its principal place of business in New York, New York. Since 2012, it has been registered with the Commission as an investment adviser. Senvest was previously registered with the Commission as Rima Senvest Management LLC and Rima Management LLC.

Recordkeeping Requirements under the Advisers Act

8. Section 204 of the Advisers Act authorizes the Commission to issue rules requiring investment advisers to make and keep for prescribed periods, and furnish copies of, certain records.

The Commission adopted Advisers Act Rule 204-2 pursuant to this authority. This rule specifies the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by investment advisers, must be maintained and produced promptly to Commission representatives.

9. The rules adopted under Advisers Act Section 204, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to, among other things, recommendations made or proposed to be made and any advice given or proposed to be given; any receipt, disbursement, or delivery of funds or securities; or the placing or execution of any order to purchase or sell any security.

Senvest's Policies and Procedures

10. Senvest maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions. The firm's compliance manual provided that the firm would "retain all electronic communications that it sends and receives." Senvest's approved communication platforms were designed to retain all such communications. The compliance manual further provided that employees were "strictly prohibited from using non-Senvest electronic communication services for any business purpose."

11. Each year, Senvest's employees acknowledged in writing that they read, understood, and abided by Senvest's compliance manual, which provided that the use of unapproved electronic communication methods, including on their personal devices, was not permitted and that they should not use personal email, any form of text messaging, iMessage, or PIN-to-PIN messaging to transmit work-related messages. Though Senvest employees were permitted to make temporary use of alternative communication methods during emergencies or technological disruptions, they were required to report such use and copy those communications to their business email accounts so that the communications could be properly archived. Senvest's policies and procedures also permitted the firm to access employees' personal devices to review for any off-channel communications.

12. Senvest's policies were designed to ensure that supervisory employees supervised and trained employees in the communications and recordkeeping policies. Supervisory policies notified employees that electronic communications were subject to surveillance by Senvest and that all communications were required to be retained. Senvest's policies and procedures required all employees, including senior officers, to attend annual training on Senvest's compliance manual, which included Senvest's code of ethics.

13. Senvest also maintained policies and procedures contained in the code of ethics section of its compliance manual designed to prevent conflicts of interest and misuse of material non-public information. These policies and procedures required employees to obtain pre-clearance for all personal securities transactions, with limited exceptions. When requesting preclearance, employees were required to certify that they did not have material non-public information and that the proposed transactions did not limit investment opportunities or otherwise disadvantage any

Senvest client. The policies also required employees to report securities transactions and holdings quarterly for supervisory review.

Senvest's Recordkeeping Failures

14. Senvest failed to implement procedures to monitor whether its employees were following the firm's policies concerning work-related communications. From January 2019 through December 2021, Senvest employees sent and received thousands of business-related messages using off-channel communications. The messages reflected discussion between and among Senvest's senior officers, managing directors, employees, fund investors, and other financial-industry participants. Despite this unapproved use of off-channel communication, Senvest did not access employees' personal devices to determine whether they were complying with the firm's communication policies. Because Senvest did not monitor or collect off-channel communications, it failed to keep these messages as its policies and procedures required.

15. After engaging in off-channel communications, no Senvest employee took steps to copy their business messages for retention by Senvest. Numerous messages related to matters within the scope of Advisers Act Rule 204-2(a)(7) and thus were required to be preserved by Senvest. For example, three senior Senvest officers and a managing director used personal devices to send and receive thousands of text messages related to firm business, including communications concerning recommendations made or proposed to be made and advice given or proposed to be given about securities.

16. At least three senior Senvest officers had their personal devices set to automatically delete messages after 30 days. These auto-deletions prevented Senvest, and the Commission's staff, from quantifying the actual number and subject matter of all off-channel communications at Senvest. Messages retrieved from other devices, however, confirmed that business-related messages had been auto-deleted, including communications required to be kept under the Advisers Act.

Senvest's Pre-Clearance Policy Violations

17. Senvest failed to enforce the policies and procedures contained in the code of ethics section of its compliance manual requiring employees to obtain pre-clearance for all personal securities transactions and requiring supervisory review of employees' quarterly transaction and holdings reports. By failing to adequately implement these policies and procedures, Senvest failed to timely detect pre-clearance failures. Between January 2019 and January 2021, certain Senvest employees traded securities in personal accounts without obtaining pre-clearance. In one quarter in 2020, for example, a managing director effected numerous securities transactions in a personal account without pre-clearance, including transactions in a security owned by a Senvest-managed fund.

Senvest's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

18. Between January 2019 and December 2021, Senvest received and responded to

Commission record requests and document subpoenas. By failing to maintain and preserve required records relating to its business, Senvest likely deprived the Commission of these off-channel communications in response to the Commission's requests and subpoenas.

Senvest's Violations and Failure to Supervise

19. As a result of the conduct described above, Senvest willfully¹ violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, which require investment advisers that are registered or required to be registered to preserve in an easily accessible place originals of all written communications received and copies of all written communications sent relating to, among other things, any recommendations made or proposed to be made and any advice given or proposed to be given; any receipt, disbursement, or delivery of funds or securities; and the placing or execution of any order to purchase or sell any security.

20. As a result of the conduct described above, Senvest willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers that are registered or required to be registered to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder.

21. As a result of the conduct described above, Senvest willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder, which require investment advisers that are registered or required to be registered to establish, maintain, and enforce a written code of ethics that meets the minimum standards set forth in Rule 204A-1.

22. As a result of the conduct described above, Senvest failed reasonably to supervise certain of its employees, with a view to preventing them from aiding and abetting violations of Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204-2(a)(7), 204A-1, and 206(4)-7 thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

Senvest's Remedial Efforts

23. Senvest revised its policies and procedures prior to the entry of this Order. Under the revised policies, the firm has provided employees with firm-issued cell phones to reduce opportunities for off-channel communications. These devices automatically upload communications into Senvest's archiving system for retention. The firm prohibited option trading in employee accounts and notified employees that making more than 10 preclearance trades in a month may trigger increased scrutiny. Senvest also prohibited employees from trading in positions owned by the firm's clients, absent exceptional circumstances.

¹ "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "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). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

24. In determining to accept the Offer, the Commission considered these remedial acts promptly undertaken by Senvest and cooperation afforded the Commission staff.

Undertakings

25. Compliance Consultant

a. Respondent shall retain, within sixty (60) days of the entry of this Order, the services of a compliance consultant (“Compliance Consultant”) that is not unacceptable to the Commission staff. The Compliance Consultant’s compensation and expenses shall be borne exclusively by Respondent.

b. Respondent will oversee the work of the Compliance Consultant.

c. Respondent shall provide to the Commission staff, within ninety (90) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant’s responsibilities, which shall include a comprehensive compliance review as described below. Respondent shall require that, within one hundred twenty (120) days of the date of the engagement letter, the Compliance Consultant conduct:

- i. A comprehensive review of Respondent’s supervisory, compliance, and other policies and procedures designed to ensure that Respondent’s electronic communications, including those found on personal electronic devices, including without limitation, cellular phones (“Personal Devices”), are being preserved in accordance with the requirements of the federal securities laws and Respondent’s policies and procedures.
- ii. A comprehensive review of training conducted by Respondent to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws and Respondent’s policies and procedures, including by ensuring that Respondent’s personnel certify in writing on a quarterly basis that they are complying with preservation requirements.
- iii. An assessment of any surveillance program measures implemented by Respondent to ensure compliance, on an ongoing basis, with the requirements found in federal securities laws to preserve electronic communications, including those found on Personal Devices.
- iv. An assessment of any technological solutions that Respondent implements to meet the record-retention requirements of the federal securities laws, including an assessment of the likelihood that Respondent’s personnel will use the technological solutions going forward and a review of the measures employed by Respondent to track employee usage of new technological solutions.

- v. An assessment of the measures used by the Respondent to prevent the use of unauthorized communications methods for business communications by employees. This assessment should include, but not be limited to, a review of the firm's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices.
- vi. A review of Respondent's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Respondent's overall communications surveillance program.

d. Respondent shall require that, within sixty (60) days after completion of the review set forth in sub-paragraphs c.i through c.vi, above, the Compliance Consultant shall submit a detailed written report of its findings to Respondent and to the Commission staff (the "Report"). Respondent shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to Respondent's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to Respondent's policies and procedures.

e. Respondent shall adopt all recommendations contained in the Report within one hundred twenty (120) days of the date of the Report; provided, however, that within sixty (60) days after the date of the Report, Respondent shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that the Respondent considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers unduly burdensome, impractical, or inappropriate, Respondent need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning Respondent's policies and procedures on which Respondent and the Compliance Consultant do not agree, Respondent and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within thirty (30) days after the conclusion of the discussion and evaluation by Respondent and the Compliance Consultant, Respondent shall require that the Compliance Consultant inform Respondent and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Respondent shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Respondent and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Respondent shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. Respondent shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of Respondent's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. Respondent shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. Respondent shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, Respondent shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The Report and related written communications of the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

26. One-Year Evaluation. Respondent shall require the Compliance Consultant to assess Respondent's program for the preservation, as required under the federal securities laws and Respondent's policies and procedures, of electronic communications, including those found on Personal Devices, commencing one year after submitting the report required by Paragraph 25.d above. Respondent shall require this review to evaluate Respondent's progress in the areas described in Paragraphs 25.c.i-c.vi above. After this review, Respondent shall require the Compliance Consultant to submit a report (the "One Year Report") to Respondent and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Respondent's policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

27. Recordkeeping. Respondent shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

28. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

29. Certification. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Eric Werner, Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

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. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204-2, 204A-1, and 206(4)-7.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in paragraphs 25 through 29, above.

D. Respondent shall within 14 days of the entry of this Order pay a civil money penalty in the amount of \$6,500,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

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

Payments by check or money order must be accompanied by a cover letter identifying Senvest as a Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and confirmation of the check or money order must also be sent to Eric Werner, Regional Director, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

E. 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 reduce 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