

## SEC Enforcement Case Summary

### RIA Charged with Failure to Maintain Electronic Communications

On April 3, 2024, the Securities and Exchange Commission (**SEC**) announced the first standalone enforcement action against a registered investment adviser (**RIA**), Senvest Management, LLC, (**Senvest**), for widespread and longstanding failures to maintain and preserve electronic communications. The firm settled the action agreeing to pay a \$6.5 million penalty and implement improvements to its compliance policies and procedures. The SEC has previously brought multiple actions against broker-dealers, dually registered investment advisers and broker-dealers, and investment advisers affiliated with broker-dealers. This case is meaningful because it is the first case solely targeting an RIA with violations under Rule 204-2 (the **Books & Records Rule**) of the Investment Advisers Act.

The SEC noted that over a three-year period, Senvest employees at various levels of authority sent and received business communications using personal texting platforms and other non-Senvest electronic communication services but that firm did not keep the substantial majority of these communications pursuant to its books and records requirements. As in prior cases, the SEC noted that Senvest had compliance policies and procedures designed to ensure retention of business-related records, including electronic communications, that the firm's approved communications platforms were designed to retain all such communications, and that employees were "strictly prohibited from using non-Senvest electronic communication services for any business purpose." Employees were required to acknowledge in annual compliance questionnaires that they had read, understood, and abided by the firm's electronic communications policies. As is common in RIA procedures, Senvest employees were permitted to make temporary use of alternative communication methods during emergencies or technological disruptions but 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 any off-channel communications.

Notwithstanding these controls, during the relevant period, the SEC alleged that Senvest employees sent and received thousands of business-related messages using off-channel communications, including messages between senior officers, managing directors, employees, fund investors, and other financial-industry participants. However, no employees took steps to copy such business communications for retention. Moreover, Senvest did not access employees' personal devices to determine whether they were complying with the firm's policies or monitoring for off-channel communications. Instead, the SEC noted that several Senvest supervisors who sent and received business communications through personal devices had such devices set to automatically delete messages after 30 days and used such

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devices for business messages. Some of the messages sent and received by such senior managers were obtained from other employee devices, confirming that required records had been auto-deleted.

Senvest was further charged with failing to enforce pre-clearance requirements in its Code of Ethics and failing to review employee transactions and holdings as required. The SEC's enforcement release noted that the firm had received subpoenas and record requests from the SEC but failed to produce required records because of such record retention failures. Therefore, it seems likely that these charges were in connection with a larger investigation, potentially involving insider trading or other matters. Regardless, the case is instructive for RIAs and serves as a reminder that they need to actively implement and enforce compliance policies and procedures involving electronic communications, monitor for compliance with such procedures and indications of off-channel communications, and ensure that they have taken appropriate steps to ensure that any off-channel business communications are appropriately archived.

As in other recent cases, in addition to monetary penalties, Senvest agreed to engage an independent compliance consultant to review its supervisory, compliance, and other policies and procedures to ensure that electronic communications, including those found on personal devices, are preserved in accordance with federal securities laws. The compliance consultant's review must further address: employee training, monitoring, and surveillance measures; technological solutions for archiving; prevention, detection, and remedial actions, with a report to the SEC regarding findings and recommendations. The firm further agreed to a one-year evaluation and report to the SEC with an updated assessment of the firm's program and remedial steps taken within the year.

See Press Release – <https://www.sec.gov/news/press-release/2024-44>