UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 3, 2024

Craig Warkol, Esq.
Schulte Roth + Zabel LLP
919 Third Avenue
New York, NY 10022

Re: **Senvest Management, LLC**
Waiver of disqualification pursuant to Rule 506(d)(2)(ii) of Regulation D

Dear Craig Warkol:

This is in response to your letter dated April 3, 2024 ("Waiver Letter"), written on behalf of Senvest Management, LLC ("Senvest") and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933 ("Securities Act"). In the Waiver Letter, Senvest requests relief from any disqualification that will arise as to Senvest under Rule 506 of Regulation D under the Securities Act as a result of the entry of the Commission's order entered April 3, 2024 against Senvest pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Order").

Assuming that Senvest complies with the Order, we have determined that Senvest has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny it reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter is hereby granted on the condition that Senvest complies with the terms of the Order. Any different facts from those represented in the Waiver Letter or Senvest's failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/ Michael P. Seaman

Michael P. Seaman
Chief Counsel
Division of Corporation Finance

SCHULTE ROTH + ZABEL

Craig Warkol
212.756.2496
Craig.Warkol@srz.com

April 3, 2024

VIA EMAIL

Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-3628

Re: *In the Matter of Senvest Management, LLC*

Dear Office of Enforcement Liaison:

We respectfully submit this letter on behalf of our client, Senvest Management, LLC ("Senvest"), in connection with the order in the above-captioned matter by the Securities and Exchange Commission (the "Commission"). In particular, Senvest requests, pursuant to Rule 506(d)(2)(ii) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), a waiver of the disqualification from relying on the exemption under Rule 506 of Regulation D that will arise as a result of the entry of the order against Senvest.

BACKGROUND

The Commission has entered an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act"), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order"), which includes findings that Senvest willfully violated Advisers Act Sections 204, 206(4), and 204A and Rules 204-2(a)(7), 206(4)-7, and 204A-1 thereunder, and failed reasonably to supervise certain of its employees, within the meaning of Section 203(e)(6), arising from Senvest's failure to implement its policies and procedures concerning pre-clearance of personal securities transactions.

The Order's findings, admitted by Senvest, include findings that certain Senvest employees communicated about Senvest-related business using non-Senvest electronic communication services, had settings on personal devices that automatically deleted messages, failed to obtain pre-clearance for personal account securities transactions, and failed to ensure that certain personal trading reviews were timely conducted.

The Order requires Senvest to 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 thereunder; censures Senvest; requires Senvest to pay a civil monetary penalty of $6,500,000; and requires Senvest to comply with certain undertakings, including retaining the services of a compliance consultant ("Compliance Consultant") within 60 days of the entry of the Order and to preserve records of compliance with such undertakings.

DISCUSSION

Senvest understands that the entry of the Order will disqualify it and its affiliates from relying on the exemption pursuant to Rule 506 of Regulation D under the Securities Act to conduct private offerings of their interests if the Commission does not waive this disqualification.[1] Senvest is a registered investment adviser with private fund clients that exclusively rely on Regulation D to raise capital from U.S. investors. These funds include Senvest Partners, LP and Senvest Partners, Ltd., which are feeder funds to Senvest Master Fund, LP, and Senvest Technology Partners, LP and Senvest Technology Partners, LTD, which are feeder funds to Senvest Technology Partners Master Fund, LP (collectively, the six funds are referred to herein as the "Funds"). Senvest is concerned that third-party investors in the Funds for which it serves as the investment adviser with discretionary trading authority would be harmed if Senvest and the Funds were disqualified from relying on Rule 506. The Commission has the authority; however, to waive the Rule 506 disqualification upon a showing of good cause that it is not necessary under the circumstances that the exemption under Rule 506 be denied.[2]

The Division of Corporate Finance's (the "Division") "Waivers of Disqualification Under Regulation A and Rules 505 and 506 of Regulation D" (the "Policy Statement") states that, in determining whether a party seeking a waiver has shown good cause, the focus of the analysis will be on how the identified misconduct bears on the applicants' fitness to participate in exempt private or limited offerings of securities.[3] The Policy Statement further says that the following factors will be considered when evaluating requests for waivers:

i. The nature of the violation and whether it involved the offer and sale of securities;

ii. Whether the conduct involved a criminal conviction or scienter-based[4] violation, as opposed to a civil or administrative non-scienter-based violation;

iii. Who the party responsible for the misconduct was;

iv. The duration of the misconduct;

v. What remedial steps were taken; and

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[1] *See* Rule 506(d)(iv)(B) (noting that no exemption under Rule 506 is available to a covered person that is subject to a Commission order that "[p]laces limitations on the activities, functions or operations of such person . . . .").

[2] *See* Rule 506(d)(2)(ii) (disqualification "shall not apply . . . [u]pon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied").

[3] *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, Waivers of Disqualification Under Regulation A and Rules 505 and 506 of Regulation D (updated Mar. 13, 2015).

[4] The Supreme Court has defined "scienter" as "a mental state embracing intent to deceive, manipulate, or defraud." *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.2 (1976).

vi. The impact on the issuer and third parties (including investors) if the waiver is denied.

Senvest respectfully requests that the Commission (or the Director of the Division, pursuant to the delegation of authority by the Commission) waive the disqualification from relying on the exemptions under Rule 506 that would be applicable as a result of the entry of the Order against Senvest, because there is good cause for doing so, as described below.

i. The Findings Described in the Order Do Not Involve the Offer or Sale of Securities.

The misconduct described in the Order did not involve the offer or sale of securities. Instead, the conduct related to recordkeeping requirements applicable to registered investment advisers and requirements regarding pre-clearance for all personal securities transactions.

ii. The Findings Described in the Order Do Not Involve Criminal Activity or Violation of Any Scienter-Based Statutes.

The Order does not describe any activities that involve a criminal conviction or a violation of any scienter-based (or non-scienter-based) fraud statue. As such, Senvest is not subject to a greater burden to show good cause that a waiver is justified under the Policy Statement.

iii. The Responsibility for the Findings Described in the Order Supports the Requested Waiver.

Senvest was responsible for the findings described in the Order. The Order does not name any individual person as responsible for the conduct at issue. Certain findings in the Order describe conduct involving personnel at various levels of seniority, including three Senvest officers and a managing director, but these findings are limited to violations of recordkeeping requirements and requirements regarding pre-clearance for certain personal securities transactions. Importantly, the findings do not reflect broadly on Senvest as a whole. As noted in the Order, the Commission considered cooperation afforded the Commission staff by Senvest and its personnel as part of its determination to accept the Offer, and all relevant personnel have cooperated fully with Senvest's implementation of enhancements to its recordkeeping and pre-clearance procedures.

iv. The Limited Duration of the Findings Described in the Order Supports the Requested Waiver.

The findings in the Order describe conduct that occurred during the limited time period from January 2019 to December 2021.

v. Senvest's Past and Future Remedial Steps Support the Requested Waiver.

Prior to January 2019, Senvest, the party responsible for the conduct, already had policies and procedures in place that required employees to utilize approved messaging platforms to transmit substantive work-related communications. Senvest has since taken voluntary remedial steps and enhanced its policies and procedures in an effort to ensure that the conduct described in the Order is properly addressed. Specifically, in the first half of 2022, Senvest provided employees with company-issued electronic devices that automatically retain all communications in Senvest's communication archiving system to ensure record retention. Senvest also regularly issues reminders to employees to

adhere to Senvest's communications policies and procedures and conducts comprehensive quarterly lookback reviews of employee's communications to identify any potential use of unapproved platforms and takes any necessary corrective actions. Senvest utilizes a leading regulatory compliance platform to track and review employees' personal securities transactions and to facilitate quarterly pre-clearance reviews. In addition, in an effort to prevent the reoccurrence of issues regarding pre-clearance of personal securities transactions, Senvest has implemented new personal securities transactions policies including prohibiting options trading as of May 1, 2021. Senvest has engaged and consults frequently with leading law firms and a top regulatory compliance provider to establish, enhance, and enforce its compliance policies and procedures with respect to recordkeeping and personal securities transactions pre-clearance requirements. Moreover, the Order will require Senvest to comply with an undertaking to retain a Compliance Consultant to conduct a comprehensive review of its electronic communications policies and procedures, which will include an assessment of Senvest's surveillance program measures to ensure compliance with electronic communications preservation requirements.

vi. <u>The Impact on the Funds and Their Investors Absent a Waiver Supports the Requested Waiver.</u>

Senvest currently acts, and in the future wishes to continue to act, as investment adviser to the Funds. Limited partnership interests in the Funds have been, and continue to be, offered and sold on a continuous basis in reliance on Rule 506, and therefore the inability of the Funds to engage in private placements pursuant to Rule 506 would be materially damaging to Senvest, the Funds, and the investors in those Funds. As is common practice among private funds, all of the Funds have relied on the Rule 506 exemption to raise capital since shortly following their inception. Senvest is currently engaged in fundraising efforts for each Fund in reliance on Rule 506 and expects to continue to rely on Rule 506 offerings, including in the coming months, to increase the amount of capital available for investment. The inability to raise capital (which would occur if the Funds are unable to rely upon Regulation D) could force the Funds to sell positions to meet ordinary course redemptions without replacing redeemed capital and/or forego investment opportunities. As such, without a Rule 506 exemption, Senvest and the Funds will not be on equal footing with their peers in the competitive market for attracting capital.

The ability to raise additional capital is critical to Senvest's implementation of the Funds' investment programs for several reasons, including by allowing the Funds to pursue future potentially profitable investment opportunities and to spread the recurring and fixed costs of managing each Fund across a larger population of investors, thereby reducing the impact on any one investor. The provision of additional capital is also necessary to help offset any redemptions by withdrawing Fund Investors (as is typical for an open-ended hedge fund), and by extension maintain Senvest's market and position exposure.

In the event of a disqualification from relying on Rule 506, the Funds would not have a viable alternative to raising capital. The Funds have relied upon Rule 506 to raise capital from U.S. investors since shortly following inception. This is primarily because Section 4(a)(2) provides far less clarity on its applicability than Rule 506, and is not suited to continuous offerings made to large numbers of investors. Senvest's investors expect the legal certainty associated with reliance on Rule 506 and we anticipate that they would not be willing to invest in or participate in an offering that does not rely on Rule 506. The Funds also are required to make representations, such as to third-party intermediaries, as to their reliance on Rule 506 in connection with certain transactions. Because of the lack of certainty

associated with Section 4(a)(2) and the perceived risk of Rule 506 disqualification, prospective investors may be unwilling to invest in the Funds, which would limit the Funds' ability to execute their investment programs.

Furthermore, offerings conducted under Section 4(a)(2) do not have the benefit of federal pre-emption of state registration requirements, which does apply to Rule 506 offerings. As a result, each Section 4(a)(2) offering requires analysis of state securities laws and potential registration in multiple states,[5] which would impose additional compliance costs that would be borne by the Funds and their investors, and dissuade prospective investors from contributing capital. Thus, the additional obligations associated with Section 4(a)(2) offerings would render any such offering impracticable and would disadvantage Senvest by limiting its ability to raise new capital for timely new investment opportunities.

Senvest believes that there are no viable alternatives to Rule 506 and, as such, any disqualification would materially disadvantage the Funds in their ability to compete with peer firms for investor capital and impede their ability implement their investment programs, which ultimately harms their investors. These detrimental effects on the Funds' investors would be disproportionate to the underlying misconduct at issue.

REQUEST FOR WAIVER

Based on the grounds for relief detailed above and the disproportionally severe and adverse collateral consequences of disqualification that would result to Senvest's business and its clients, Senvest respectfully submits that any disqualification from reliance on the offering exemptions under Regulation D is not necessary under the circumstances and that Senvest demonstrated good cause for the relief requested.

Accordingly, we respectfully request that the Commission (or the Division) waive any disqualification under Regulation D that will apply to Senvest as a result of the entry of the Order, to the extent applicable and effective as of the date of the Order.

We appreciate your consideration. I am also available to discuss at the number above.

Respectfully submitted,

Craig Warkol
Schulte Roth & Zabel LLP

[5] The Funds currently have investors in 21 states and Washington D.C.