

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-15-1770-15-SC01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES AND NOTICE OF INTENT
) TO ENTER ORDER TO CEASE AND DESIST, TO DENY
Katana Capital, LLC,) FUTURE REGISTRATIONS, TO IMPOSE FINES, AND TO
Robert Kevin Niewijk,) CHARGE COSTS
Charles Maximillian Songhurst,)
)
Respondents.)

THE STATE OF WASHINGTON TO: Katana Capital, LLC (IARD #144882)
Robert Kevin Niewijk (CRD #5397775)
Charles Maximillian Songhurst (CRD #5397778)

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents, Katana Capital, LLC, Robert Kevin Niewijk, and Charles Maximillian Songhurst, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist, under RCW 21.20.110(1), to deny future registration applications, under RCW 21.20.110(1) and RCW 21.20.395 to impose fines, and under RCW 21.20.110(7) and RCW 21.20.390 to charge costs. The Securities Administrator finds as follow:

TENTATIVE FINDINGS OF FACT

Respondents

1. Katana Capital, LLC (“Katana Capital”) is an Illinois Limited Liability Company formed on March 30, 2007. Its principal office and place of business is located at 539 South Euclid Avenue, Oak Park, IL 60304. Katana Capital was previously registered with the Washington State Securities Division (“Securities Division”) as an investment adviser from January 2, 2008 to July 22, 2015. Katana Capital’s Investment Adviser Registration Depository (“IARD”) number is 144882. Katana Capital manages one private fund, Katana Capital Partners, L.P. (“Katana Fund”), and does not manage individual client accounts.

2. Robert Kevin Niewijk (“Niewijk”) is an individual residing in Illinois. Niewijk is not currently registered with the Washington State Securities Division in any capacity. He was previously registered with the Securities Division as an investment adviser representative for Katana Capital from January 4, 2008 to July 22, 2015. Niewijk is a managing member and 50% owner of Katana Capital. Niewijk’s Central Registration Depository (“CRD”) number is 5397775.

3. Charles Maximillian Songhurst (“Songhurst”) currently resides in the United Kingdom. Songhurst is not currently registered with the Securities Division in any capacity. He was previously registered with the Washington

1 State Securities Division as an investment adviser representative for Katana Capital from January 4, 2008 to July 22,
2 2015. Songhurst is a managing member and 50% owner of Katana Capital. Songhurst's CRD number is 5397778.

3 Nature of the Conduct

4 *Audited Financials*

5 4. Katana Capital, when it was a registered investment adviser in Washington State, was required to either
6 engage an independent party to authorize withdrawals from a pooled investment vehicle account or provide audited
7 financial statements, conducted in accordance with general accepted auditing standards, of the pooled investment
8 vehicle to all limited partners. The policy behind this requirement is to ensure that fund assets are not misused and to
9 prevent an investment adviser from giving a false sense of security to its client(s).

10 5. Katana Capital did not engage an independent party to authorize withdrawals from Katana Fund, its pooled
11 investment vehicle account, and, therefore, was required to provide audited financial statements, conducted in
12 accordance with general accepted auditing standards, of Katana Fund to all its limited partners.

13 6. Although Katana Capital engaged an auditor to audit the financial statements of Katana Fund from 2009-
14 2014, these audits contained a qualified opinion stating that these financial statements failed to conform to generally
15 accepted accounting standards. Specifically, the qualified opinions stated that Katana Capital omitted disclosure of
16 Katana Fund's investments that exceeded 5% of the partners' capital required in the condensed schedule of
17 investments.

18 *False Filings*

19 7. When Katana Capital first registered as an investment adviser in Washington State, it was required to disclose
20 information about its business and business practices by filing a form ADV. For as long as Katana Capital was
21 registered in Washington State, it was required to file annual updating amendments to its Form ADV. These annual
22 Form ADV updates were official filings with the Director of the Securities Division.

23 8. Item 23(h) of Form ADV, Part 1 Section 7.B.(1) asks if the independent annual audit report of a private fund
24 contains an unqualified opinion.

25 9. From 2012-2014, Katana Capital answered "yes" to item 23(h) of Form ADV, Part 1 Section 7.B.(1) a total of
four times. Each time Katana Capital answered yes to item 23(h), it misrepresented that its independent annual audits
of Katana Fund contained an unqualified opinion when, in fact, they each contained a qualified opinion (as described
above).

10. Niewijk certified that the information and statements made in Katana Capital's Form ADVs were true and
correct by signing each Form ADV's Execution Page.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the following Conclusions of Law are made:

1. Katana Capital, LLC violated WAC 460-24A-107 when it did not satisfy the requirement under WAC 460-24A-107(1)(b) to have audited financials of its pooled investment vehicle comply with generally accepted accounting standards. Such conduct is grounds to deny its future registration applications pursuant to RCW 21.20.110(1)(a) and (b), to impose a fine pursuant to RCW 21.20.110 and RCW 21.20.395, and to charge costs pursuant to RCW 21.20.110(7) and RCW 21.20.390.

2. Katana Capital, LLC violated RCW 21.20.350 by filing four Form ADVs with the Securities Division that falsely answered that its independent audits reports of Katana Fund contained an unqualified opinion when, in reality, the independent audit reports contained a qualified opinion. These four Form ADVs were false or misleading in a material respect. Such conduct is grounds to deny its future registration applications pursuant to RCW 21.20.110(1)(a) and (b), to impose a fine pursuant to RCW 21.20.110(1) and RCW 21.20.395, and to charge costs pursuant to RCW 21.20.110(7) and RCW 21.20.390.

3. Pursuant to RCW 21.20.110(6), Robert Kevin Niewijk, as a person who controls Katana Capital, LLC, is responsible for Katana Capital, LLC’s violations of WAC 460-24A-107 and RCW 21.20.350. Such conduct is grounds to deny his future registration applications pursuant to RCW 21.20.110(1)(a) and (b), to impose a fine pursuant to RCW 21.20.110(1) and RCW 21.20.395, and to charge costs pursuant to RCW 21.20.110(7) and RCW 21.20.390.

4. Pursuant to RCW 21.20.110(6), Charles Maximillian Songhurst, as a person who controls Katana Capital, LLC, is responsible for Katana Capital, LLC’s violations of WAC 460-24A-107 and RCW 21.20.350. Such conduct is grounds to deny his future registration applications pursuant to RCW 21.20.110(1)(a) and (b), to impose a fine pursuant to RCW 21.20.110(1) and RCW 21.20.395, and to charge costs pursuant to RCW 21.20.110(7) and RCW 21.20.390.

NOTICE OF INTENT TO DENY FUTURE REGISTRATION

Pursuant to RCW 21.20.110(1) and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that any future investment adviser or broker-dealer registration that Katana Capital, LLC might seek will be denied.

Pursuant to RCW 21.20.110(1) and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that any future investment adviser, investment adviser representative, broker-dealer, or securities salesperson registration that Robert Kevin Niewijk might seek will be denied.

Pursuant to RCW 21.20.110(1) and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that any future investment adviser, investment adviser representative, broker-dealer, or securities salesperson registration that Charles Maximillian Songhurst might seek will be denied.

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NOTICE OF INTENT TO ISSUE AN ORDER TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents Katana Capital, LLC, Robert Kevin Niewijk, and Charles Maximillian Songhurst each shall cease and desist from violation of RCW 21.20.350.

NOTICE OF INTENT TO IMPOSE A FINE

Pursuant to RCW 21.20.110(1) and RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents Katana Capital, LLC, Robert Kevin Niewijk, and Charles Maximillian Songhurst each shall be liable for and shall pay a fine as follows:

- Katana Capital shall be liable for and shall pay a fine of \$10,000;
- Robert Kevin Niewijk shall be liable for and shall pay a fine of \$5,000; and
- Charles Maximillian Songhurst shall be liable for and shall pay a fine of \$5,000.

NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.110(7) and RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents Katana Capital, LLC, Robert Kevin Niewijk, and Charles Maximillian Songhurst each shall be liable for and shall pay the costs, fees, and other expenses incurred in the administrative investigation and hearing of this matter, in an amount not less than the following:

- Katana Capital, LLC shall be liable for and shall pay costs of at least \$500;
- Robert Kevin Niewijk shall be liable for and shall pay costs of at least \$250; and
- Charles Maximillian Songhurst shall be liable for and shall pay costs of at least \$250.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The respondents, Katana Capital, LLC, Robert Kevin Niewijk, and Charles Maximillian Songhurst, may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

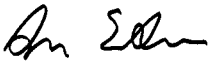
Signed and Entered this 28th day of August 2015.



William M. Beatty
Securities Administrator

Approved by:

Presented by:



Suzanne Sarason
Chief of Enforcement

Brian J. Guerard
Financial Legal Examiner

Reviewed by:

Jack McClellan
Financial Legal Examiner Supervisor