

**IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990. c. S.5, AS AMENDED**

-and-

**IN THE MATTER OF TRAFALGAR ASSOCIATES LIMITED
AND EDWARD FURTAK**

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing, the Ontario Securities Commission (the "Commission") will convene a hearing to consider the approval of this proposed settlement between Staff of the Commission ("Staff") and the respondents Trafalgar Associates Limited ("Trafalgar") and Edward Furtak ("Furtak") including the making of an Order pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff agrees to recommend settlement of the proceeding respecting Trafalgar and Furtak initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Trafalgar and Furtak consent to the making of an Order against them in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

3. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff, Trafalgar and Furtak agree with the facts set out in paragraphs 4 through 25 of this Settlement Agreement.

Facts

(a) The Respondents

4. Trafalgar is a company incorporated under the laws of Ontario. On April 15, 1998, Trafalgar was granted registration with the Commission as a limited market dealer. Trafalgar's registration was suspended in May 1999 due to non-renewal of its registration.

5. Furtak is a Canadian citizen residing in Bermuda. Furtak is the President of the Trafalgar Group of Companies. Trafalgar is a wholly owned subsidiary of this Group. Furtak is Trafalgar's President.

6. Furtak is also the Chair and President of Conexys Corporation Limited, formerly FaxForward International Ltd. ("Conexys"). Conexys trades on the Bermuda Stock Exchange under the symbol CXYS.BH.

7. During the material time, Furtak was not registered with the Commission.

(b) Distributions of FFWD-1998 Limited Partnership Units

8. FFWD-98 Limited Partnership ("FFWD-98") was established in or about April 1998. FFWD-98 entered into a services agreement with Conexys. Conexys was developing fax technology that it intended to market to corporations in Bermuda and Canada.

9. Units in FFWD-98 were offered exclusively to residents of Ontario through an Offering Memorandum dated April 30, 1998 (the "OM"). According to the OM, a maximum of 1,000 units was offered at \$5,000 per unit.

10. Units in FFWD-98 were sold to ten Ontario investors for a total amount sold of \$220,000. Trafalgar, through Furtak, sold \$150,000 worth of the FFWD-98 units to one client (the "Client"). The remaining investors purchased between \$5,000 and \$10,000 worth of FFWD-98 from registered salespeople who were not employees of Trafalgar.

11. FFWD-98 did not file a preliminary prospectus or prospectus with the Commission. Trafalgar and Furtak traded in securities, which trades were distributions, without a prospectus being filed or received by the Commission and with no exemption from the prospectus requirements of Ontario securities law being available for the vast majority of such distributions.

12. The FFWD-98 units offering was advertised on the Trafalgar Group's website and in at least one Toronto newspaper. Selling commissions relating to the sale of FFWD-98 units to the Client and promotional expenses were paid to Trafalgar.

13. Although Form 20's respecting the sale of FFWD-98 units ultimately were filed with the Commission, they were not filed in accordance with the Act.

(c) Conversion of FFWD-98 Units

14. The FFWD-98 units ultimately were converted to shares of Conexys. In May 1999, the General Partner of FFWD-98 gave notice to all the FFWD-98 investors (the "Investors") that Conexys had elected to terminate its services agreement with FFWD-98. Accordingly, Conexys was obliged to, and did, purchase the units held by the Investors at the price of 2,300 Conexys shares for each FFWD-98 unit.

15. In converting the FFWD-98 units to Conexys shares, Trafalgar and Furtak sold securities in a publicly listed company when they were not registered by the Commission to do so.

16. Further, no preliminary prospectus and prospectus was filed and receipted by the Commission and no prospectus exemption was available for the vast majority of these distributions.

17. Investors were not provided with access to substantially the same information concerning the Conexys shares that a prospectus filed under the Act would provide. Although the OM referenced a potential conversion, it provided no information about Conexys' business and financial condition. Trafalgar and Furtak did not supplement this information for their clients.

(d) Advertising and Holding Out

18. Contrary to section 44 of the Act, Trafalgar advertised on its website that it was registered as a limited market dealer with the Commission. Once notified by Enforcement Staff of this contravention of the Act, Trafalgar immediately removed the impugned reference.

19. In the Spring of 2000, Trafalgar held itself out as being registered with the Commission when it was not registered contrary to section 45 of the Act. Trafalgar informs Staff that, at the time, it was unaware that its registration had lapsed.

(e) Unregistered Selling by Furtak

20. Although he was not registered to do so, Furtak sold \$150,000 worth of the FFWD-98 units to the Client in May 1998. At the time of the investment, the Client was in his early 80's.

21. Subsequently, Furtak sold to the Client an interest in a software licensing agreement, the cost of which was \$90,000 cash and a \$210,000 promissory note. The licensing agreement locked in the octogenarian's money for ten years.

22. In Staff's view, the investments described in paragraphs 20 and 21 above were unsuitable for the Client.

(f) Conduct Contrary to Ontario Securities Law and the Public Interest

23. Trafalgar's and Furtak's conduct was contrary to Ontario securities law and the public interest.

(g) Rescission

24. On or about February 17, 2003, Trafalgar redeemed the Investors' investment in FFWD-98 (now Conexys shares). The purchase price represented the full value paid for the FFWD-98 units by the Investors.

25. Furtak redeemed the Client's \$90,000 investment in the software licensing agreement and effected the discharge of the \$210,000 promissory note on or about February 17, 2003 and February 21, 2003 respectively.

IV. TERMS OF SETTLEMENT

26. Trafalgar agrees to the following terms of settlement:

- (a) the making of an Order:
 - (i) approving this settlement; and
 - (ii) reprimanding Trafalgar;
- (b) Trafalgar will undertake in writing to the Commission that it will not apply to the Commission for registration for 4 months; and
- (c) Trafalgar will pay costs to the Commission in the amount of \$5,000.

27. Furtak agrees to the following terms of settlement:

- (a) the making of an Order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by Furtak cease for 6 months;
 - (iii) reprimanding Furtak; and
 - (iv) Furtak will pay costs to the Commission in the amount of \$2,500.

V. STAFF COMMITMENT

28. If this settlement is approved by the Commission, Staff will not initiate any complaint to the Commission or any other proceeding under the Act against Trafalgar or Furtak respecting the facts set out in Part III of this Settlement Agreement.

VI. APPROVAL OF SETTLEMENT

29. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for May 15, 2003 or such other date as may be agreed to by Staff, Trafalgar and Furtak (the "Settlement Hearing"). Furtak will attend the Settlement Hearing in person.

30. Counsel for Staff or for Trafalgar/Furtak may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff, Trafalgar and Furtak agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

31. If this settlement is approved by the Commission, Trafalgar and Furtak agree to waive their rights to a full hearing, judicial review or appeal of the matter under the Act.

32. Staff, Trafalgar and Furtak agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

33. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission;

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff, Trafalgar and Furtak leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff, Trafalgar and Furtak;
- (b) Staff, Trafalgar and Furtak shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff, Trafalgar and Furtak, or as may be required by law; and
- (d) Trafalgar and Furtak agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

34. Subject to paragraph 30 above, this Settlement Agreement and its terms will be treated as confidential by Staff, Trafalgar and Furtak until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff, Trafalgar and Furtak, or as may be required by law.

35. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

36. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

37. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 26th day of March, 2003

WITNESS

TRAFALGAR ASSOCIATES LIMITED

DATED this 27th day of March, 2003

WITNESS

EDWARD FURTAK

DATED this 13th day of May, 2003

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

(Per) “Michel Watson”
Michael Watson
Director, Enforcement Branch