



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Mark Steven Pollon

Heard: February 28, 2018 in Edmonton, Alberta

Decision: February 28, 2018

Reasons for Decision: April 5, 2018

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

The Hon. René P. Foisy

Chair

Kathleen Jost

Industry Representative

Richard R. Sydenham

Industry Representative

Appearances:

Justin Dunphy

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Counsel for the Mutual Fund Dealers
Association of Canada

Mark Steven Pollon

Respondent, in person and not represented by
counsel

1. By Notice of Settlement Hearing dated January 2, 2018, and duly served upon Mark Steven Pollon, (“Respondent”), a Settlement Hearing was heard in Edmonton, Alberta on February 28, 2018.
2. MFDA Staff has entered into a Settlement Agreement with the Respondent dated November 20, 2017 in which the Respondent admits:
 - a) in September 2014, he altered an account form that had been previously signed by a client and used in a previous transaction in order to process a new transaction in the client’s account, contrary to MFDA Rule 2.1.1; and
 - b) between September 2008 and July 2016, he obtained, possessed, and, in some instances, used to process transactions, 22 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1.

Agreed Facts

Registration History

3. Since January 2005, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with WFG Securities Inc. (“WFG”), a Member of the MFDA.
4. At all material times, the Respondent conducted business in the Edmonton, Alberta area.

Altering and Re-Using Account Forms

5. On or about July 21, 2014, the Respondent sent a fully signed and completed RRSP trade ticket to WFG for processing to purchase mutual funds for a client. On or about September 16, 2014, the Respondent re-used the previously completed trade ticket to process another purchase for the client by using liquid correction fluid to change the date and the fund codes, which was submitted to WFG for processing.

Pre-Signed Account Forms

6. At all material times, WFG's policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining, holding, or using pre-signed account forms.
7. Between September 2008 and July 2016, the Respondent obtained, possessed, and, in 21 instances, used to process transactions, 22 pre-signed account forms in respect of 2 clients.
8. The pre-signed account forms consisted of:
 - a) 1 Locked In Retirement Account trade ticket;
 - b) 7 redemption tickets;
 - c) 9 purchase tickets; and
 - d) 5 switch tickets

WFG's Investigation

9. On or about June 7, 2016, WFG identified 2 pre-signed account forms located in the Respondent's client files as a result of a branch review. WFG subsequently commenced an investigation and identified the remaining account forms that are the subject of this Settlement Agreement.
10. On or about June 21, 2016, as part of its investigation, WFG sent letters to all of the clients whose accounts were serviced by the Respondent in order to determine whether the transactions in the clients' accounts were authorized. The clients did not report any concerns.
11. On or about July 27, 2016, WFT issued a compliance notice to the Respondent for obtaining and using altered and pre-signed account forms, and required him to complete an internal training course.

Additional Factors

12. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
13. There is no evidence of any client loss or that any transactions were unauthorized.
14. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
15. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

The Settlement Agreement

Contraventions

16. The Respondent has admitted that:
 - a) in September 2014, he altered an account form that had been previously signed by a client and used in a previous transaction in order to process a new transaction in the client's account, contrary to MFDA Rule 2.1.1; and
 - b) between September 2008 and July 2016, he obtained, possessed, and, in some instances, used to process transactions, 22 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1.

Settlement Agreement, at para. 4.

Terms of Settlement

17. The Respondent has agreed to the following penalty:
 - a) a fine of \$9,000; and
 - b) costs of \$2,500.

Settlement Agreement, at para. 5.

18. For the reasons set out herein, Staff submits that the settlement advances the public interest as it is reasonable and proportionate having regard to the nature and extent of the Respondent’s misconduct and all of the circumstances.

Law

Applicable Provisions

19. The relevant MFDA provisions in this matter are:

Law	Details of Provision	Book of Authorities
MFDA Rule 2.1.1	Standard of Conduct	Tab 1
Sections 20, 24.1.1, 24.1.4, 24.2, 24.4 of MFDA By-law No. 1	Power of hearing panels to discipline Approved Persons and order the payment of costs	Tab 2
Rules 14 and 15 of the MFDA Rules of Procedure	Rules relevant to MFDA settlement hearings	Tab 3
MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013)	Notice regarding signature falsification	Tab 4
MFDA Bulletin #0661-E dated October 2, 2015	Bulletin regarding signature falsification	Tab 5

Factors Concerning Acceptance of a Settlement Agreement

20. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement referred to it on the recommendation of Staff. The Hearing Panel shall either accept the settlement agreement or reject it.

MFDA By-law No. 1, Staff’s Book of Authorities, Tab 2.

21. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

“We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” [Emphasis added.]

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37, Staff's Book of Authorities, Tab 6.

Milewski (Re), [1999] IDACD No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999, Staff's Book of Authorities, Tab 7.

22. Hearing Panels have also held that settlements worked out by the parties should be respected, as panels do not know what led to the settlement, or what was given up by the parties during the course of the negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement is likewise a factor to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017 at paras. 21-22, Staff's Book of Authorities, Tab 8.

23. Settlements assist the MFDA in meeting its regulatory objective of protecting the public by proscribing activities that are harmful to the public, and by enabling flexible remedies tailored to the interests of both the MFDA and a respondent. Staff submits that the ability of the MFDA to enter into settlements is enhanced where Hearing Panels do not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness.

British Columbia Securities Commission v Seifert, 2007 BCCA 484 at para. 31, Staff's Book of Authorities, Tab 9.

24. In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) Whether the settlement agreement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

- e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) Whether the settlement agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), supra, at para. 36 and the decisions cited therein, Staff’s Book of Authorities, Tab 6.

MFDA Penalty Guidelines

25. The MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed pursuant to a settlement agreement. The penalty types and ranges stated in the Penalty Guidelines are not mandatory or binding; they are intended to provide a basis upon which a Hearing Panel’s discretion can be exercised consistently in like circumstances.

Excerpts from the MFDA Penalty Guidelines, Staff’s Book of Authorities, Tab 10.

26. In cases involving misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

Breach	Penalty Type & Range	Specific Factors to Consider
Standard of Conduct (Rule 2.1.1) (Guidelines, p. 27)	<ul style="list-style-type: none"> • Fine (AP): Minimum of \$5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Suspension • Permanent prohibition in egregious cases 	<ul style="list-style-type: none"> • Nature of the circumstances and conduct • Number of individuals affected • Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute

Excerpts from the MFDA Penalty Guidelines at p. 27, Staff’s Book of Authorities, Tab 10

Appropriateness of the Proposed Penalty

27. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557 (SCC) at paras. 59, 68, Staff's Book of Authorities, Tab 11.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 74, Staff's Book of Authorities, Tab 12.

28. In addition to protection of the investor, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry.

Pezim v British Columbia (Superintendent of Brokers), *supra*, at paras. 59, 68, Staff's Book of Authorities, Tab 11.

29. Hearing Panels frequently consider the following factors when determining whether a penalty is appropriate:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activities;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

Breckenridge (Re), *supra*, at para. 77 and the decisions cited therein, Staff's Book of Authorities, Tab 12.

Enhanced Penalties

30. In the present matter, Staff submits that there is an additional consideration for the Hearing Panel to take into account. In MFDA Bulletin #0661-E, dated October 2, 2015, Staff reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. In the Bulletin, Staff advised Members and Approved Persons that Staff will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

Application in the Present Case

31. Staff have taken the factors set out above into account in reaching the Settlement Agreement with the Respondent, as follows:

i) Nature of the Misconduct: Pre-Signed Account Forms

32. The Respondent’s misconduct is serious; he obtained, possessed, and in some instances, used to process transactions, 22 pre-signed account forms in respect of 2 clients.

33. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As stated by the MFDA Hearing Panel in *Breckenridge (Re)*: “The Rule articulates the most fundamental obligations of all registrants in the securities industry.”

Breckenridge (Re), supra, at para. 71, Staff’s Book of Authorities, Tab 12.

Price (Re), MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at paras. 118 – 121, Staff’s Book of Authorities, Tab 13.

34. MFDA Rule 2.1.1 requires that each Member and Approved Person deal fairly, honestly, and in good with faith with clients, observe high standards of ethics and conduct in the

transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

MFDA Rule 2.1.1, Staff's Book of Authorities, Tab 1.

35. The MFDA has made clear to Approved Persons since October 31, 2007, in both MFDA Staff Notices and Bulletins, that possessing and using pre-signed forms is contrary to the obligations of Rule 2.1.1.

Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013), Staff's Book of Authorities, Tab 4.

MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015, Staff's book of Authorities, Tab 5.

36. Hearing Panels of the MFDA, IIROC, and provincial securities commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

Price (Re), supra at para. 135 and the decisions cited therein, Staff's Book of Authorities, Tab 13.

37. The MFDA Hearing Panel in *Price (Re)* identified the dangers posed by pre-signed forms which can be summarized as follows:

- a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) at worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client; and
- c) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

Price (Re), supra, at paras. 122 – 124, Staff's Book of Authorities, Tab 13.

38. The prohibition on the use of pre-signed account forms applies regardless of whether the client was aware, or authorized the use, of the pre-signed forms, and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Wellman (Re), MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, at para. 10, Staff's Book of Authorities, Tab 14.

ii) Nature of the Misconduct: Altered and Re-Used Account Form

39. The Respondent also altered an account form that had been previously signed by a client and used in a previous transaction in order to process a new transaction in the client's account.

40. Hearing Panels have held that altering or falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

Byce (Re), MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013, Staff's Book of Authorities, Tab 15.

41. Like pre-signed account forms, the creation, possession or use of an altered or falsified form is considered serious misconduct. The reasoning in *Price (Re)*, above, at paragraph 21, for why pre-signed account forms affect the integrity and reliability of account documents also applies to altered and falsified forms. With respect to altered or falsified forms in particular, there also exists the possibility that the changes are made to the forms without the clients' knowledge or consent.

42. On the basis of the foregoing, by obtaining and using pre-signed and altered forms as described in Part III of the Settlement Agreement, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1, and therefore, engaged in misconduct that should be regarded as serious.

iii) Post-Bulletin Misconduct

43. Staff notes that in this matter, 2 of the pre-signed account forms were obtained after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015. Staff considers this to be an aggravating factor, which has been discussed by hearing panels in several MFDA decisions.

Owen (Re), MFDA File No. 201784, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 7, 2017, at para. 35, Staff's Book of Authorities, Tab 16.

Ackerman (Re), MFDA File No. 201734, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 13, 2017, at para. 29, Staff's Book of Authorities, Tab 17.

iv) The Respondent's Experience in the Securities Industry

44. The Respondent has been registered as a mutual fund dealing representative since January 2005.

Settlement Agreement, at para. 7.

v) The Respondent's Recognition of the Seriousness of his Misconduct

45. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

Settlement Agreement, at para. 18.

vi) Client Harm and Benefits Received by the Respondent

46. Staff's investigation did not reveal any evidence of unauthorized trades or client losses. There is no evidence to suggest that the Respondent received a financial or other benefit through his conduct, and there were no client complaints.

Settlement Agreement, at paras. 13, 15.

vii) Deterrence

47. Staff considers a fine of \$9,000 to be a serious penalty which will be sufficient to achieve the goals of specific and general deterrence, having regard to the aggravating factors described above.

48. The penalty demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. The penalty will also deter others in the capital markets from engaging in similar activity.

viii) Penalty Guidelines

49. The Panel is seeking a penalty which exceeds the minimum fine recommended by the Penalty Guidelines for an Approved Person’s breach of the standard of conduct. This is primarily due to the number of forms at issue in the present matter, as well as the post-bulletin misconduct.

ix) Previous Decisions in Similar Cases

The following penalties have been imposed in similar circumstances:

Case	Facts	Outcome
<i>Nguyen (Re)</i> ¹	<ul style="list-style-type: none"> The Respondent admitted that she obtained, maintained, and, in some instances, used, 16 pre-signed account forms in respect of 9 clients. The Respondent falsified 1 account form in respect of 2 clients without having the clients initial the alterations. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$7,500 Costs of \$2,500
<i>Meunier (Re)</i> ²	<ul style="list-style-type: none"> The Respondent admitted that she, or her assistant for whom she was responsible, obtained, possessed, and used to process transactions, 29 pre-signed forms in respect of 20 clients. The Respondent altered 1 form without having the client initial the alterations. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$8,500 Costs of \$1,250
<i>Barker (Re)</i> ³	<ul style="list-style-type: none"> The Respondent admitted that he obtained, possessed, and used to process transactions, 31 pre-signed account forms in respect of 12 clients. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$8,500 Costs of \$2,500
<i>Estabrooks(Re)</i> ⁴	<ul style="list-style-type: none"> The Respondent admitted that he re-used existing order tickets on 2 occasions and submitted the altered trade tickets without having the clients initial the alterations. The Respondent also obtained, possessed, and used to process transactions, 26 pre-signed 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$7,500 Costs of \$2,500

¹ *Nguyen (Re)*, MFDA File No. 2016105, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 18, 2017, Staff’s Book of Authorities, Tab 18

² *Meunier (Re)*, MFDA Rile No. 201657, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, Staff’s Book of Authorities, Tab 19.

³ *Barker (Re)*, MFDA File No. 201704, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 7, 2017, Staff’s Book of Authorities, Tab 20.

⁴ *Estabrooks (Re)*, MFDA File No. 201638, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated August 31, 2016, Staff’s Book of Authorities, Tab 21

	account forms in respect of 13 clients.	
<i>Courneya, Mark (Re)</i> ⁵	<ul style="list-style-type: none"> • The Respondent obtained, possessed, and used to process transactions, 29 pre-signed forms in respect of 10 clients. • The Respondent had previously been warned against the use of pre-signed forms. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$10,000 • Costs of \$2,500

Summary

50. Having regard to all of the foregoing factors, we conclude that the penalties proposed in the Settlement Agreement are reasonable and proportionate and will deter the Respondent and other Approved Persons from obtaining, maintaining and using pre-signed or altered account forms. Accordingly, acceptance of this Settlement Agreement will advance the public interest and the objective of the MFDA to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

51. The Settlement Agreement is accepted.

52. The Formal Order is attached as Schedule “1” hereto.

DATED this 5th day of April, 2018.

“René P. Foisy”

The Hon. René P. Foisy
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard R. Sydenham”

Richard R. Sydenham
Industry Representative

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⁵ *Courneya, Mark (Re)*, MFDA File No. 201639, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 23, 2017, Staff’s Book of Authorities, Tab 22.

Schedule “1”

Order

File No. 201801



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Mark Steven Pollon

ORDER

(ARISING FROM SETTLEMENT HEARING ON FEBRUARY 28, 2018)

WHEREAS on January 2, 2018, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Mark Steven Pollon (“Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated November 20, 2017 (“Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a. in September 2014, altered an account form that had been previously signed by a client and used in a previous transaction in order to process a new transaction in the client’s account, contrary to MFDA Rule 2.1.1; and

- b. between September 2008 and July 2016, obtained, possessed, and, in some instances, used to process transactions, 22 pre-signed account forms in respect of two clients, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall pay a fine in the amount of \$9,000 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this 28th day of February, 2018.

“René Foisy”

The Hon. René Foisy
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative