



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

COPIA INVESTMENT PARTNERS LTD.,)
MASO CAPITAL INVESTMENTS)
LIMITED, BLACKWELL PARTNERS LLC –)
SERIES A, and STAR V PARTNERS LLC, on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

C.A. No. 2024-1184-KSJM

STERLING FUND MANAGEMENT, LLC,)
STERLING CAPITAL PARTNERS IV, L.P.,)
SCP IV PARALLEL, L.P., AVI MEZZ CO.,)
L.P., M. AVI EPSTEIN, R. CHRISTOPHER)
HOEHN-SARIC, and STEVE FIRENG,)

Defendants.)

UNREDACTED
PUBLIC VERSION
FILED: 11/25/2024

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Copia Investment Partners Ltd., Maso Capital Investments Limited, Blackwell Partners LLC – Series A, and Star V Partners LLC (collectively, “Plaintiffs”), on behalf of themselves and similarly situated former holders of common stock or CHESS Depositary Interests (“CDIs”) of Keypath Education International, Inc. (“Keypath” or the “Company”), bring this Verified Class Action Complaint (the “Complaint”) asserting claims for breach of fiduciary duty against Sterling Fund Management, LLC, SCP IV Parallel, L.P., Sterling Capital Partners IV, L.P., and AVI Mezz Co., L.P. (collectively, “Sterling Partners” or the “Sterling

Partners Entities”), M. Avi Epstein, R. Christopher Hoehn-Saric, and Steve Fireng (the “Individual Defendants” and, with the Sterling Partners Entities, “Defendants”).

INTRODUCTION

1. This action challenges an underpriced, conflicted-controller squeeze-out (the “Merger”) that unambiguously failed to comply with the requirements of *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

2. At all relevant times, Sterling Partners controlled Keypath. It owned 66% of the Company’s outstanding common stock and voting power and also possessed significant contractual rights, including rights pursuant to which it placed two of its own senior employees on Keypath’s seven-member Board of Directors (the “Board”).

3. Prior to the Merger, Keypath’s stock price had been depressed for years as a result of industry-wide headwinds in the education technology (“edtech”) industry and the illiquidity of the market for its securities listed on the Australian Stock Exchange. The Company’s actual performance, however, was strong. It had recently become profitable, and its revenue was growing and consistently meeting or exceeding the high-end of projections. Sterling Partners capitalized on this dislocation by seeking a squeeze-out, while insisting it would not be a seller under any circumstances.

4. Sterling Partners got what it wanted. On September 11, 2024, Sterling Partners completed the squeeze-out Merger through which it took Keypath private. Unaffiliated stockholders were cashed out for A\$0.87¹ per share in Merger consideration, while the most informed insiders—including Keypath’s CEO, Defendant Steve Fireng, and other senior executives—rolled over their investment alongside Sterling Partners.

5. Neither the process leading to the Merger nor the A\$0.87 Merger consideration were fair to Keypath’s unaffiliated public stockholders.

6. *First*, the process failed to protect the interests of Keypath’s unaffiliated public stockholders. Though the Keypath Board formed a Special Committee, it was recognized from the outset that the Special Committee would, in the words of its legal advisor, “not take a traditional form.” But even that loose phrase understates the problems with the Special Committee’s work and role. Among other things:

- The Special Committee was not free to hire its own legal advisors. Instead, it was instructed by the Board to work with the Company’s regular legal counsel, who were beholden to Sterling Partners.
- The Special Committee relied on management projections that were prepared in anticipation of deal negotiations. Company management who prepared these projections were poised to roll over their equity. Worse, in developing those projections, management worked in cooperation with Macquarie, a long-time financial advisor to Sterling Partners that ultimately represented Sterling Partners in connection

¹ Valuations in the form A\$__ are stated in Australian dollars, the currency in which the Company transacted.

with the Merger. To put it bluntly, *the Special Committee's projections were prepared by their counterparty's financial advisor.*

- The Special Committee did not hire its own financial advisor to assist in pricing negotiations or perform any market outreach. It hired an advisor, BMO, for the sole purpose of receiving a box-checking fairness opinion. But even BMO was conflicted by a history of performing substantial work for Sterling Partners.
- The Special Committee permitted conflicted members of management to attend and participate in almost all of its meetings.
- The Special Committee was preoccupied with ensuring that they, personally, would receive acceptable tail D&O insurance, trading off Merger consideration for their own insurance coverage. Indeed, the Special Committee immediately moved down from insisting on A\$1.00 per share to A\$0.87 after Sterling Partners essentially threatened it would not pay for its desired D&O insurance.
- The Special Committee failed to hold a final meeting to approve the Merger after receiving BMO's fairness analysis. Instead of analyzing or discussing the fairness analysis, the Special Committee rubber-stamped the Merger by written consent.

7. *Second*, and unsurprisingly, this process failed to produce a fair price for Keypath's unaffiliated stockholders. The valuation materials prepared by the Special Committee's conflicted advisor, BMO, showed how underpriced the Merger consideration was. BMO's fairness analysis identified analyst price targets with a midpoint of A\$1.235 (approximately 42% above the deal price) and presented revenue multiples based on comparable companies supporting a midpoint valuation of A\$1.30 based on FY24 revenue (approximately 49.5% above the deal price) and

a midpoint valuation of A\$1.32 based on FY25 revenue (approximately 52% above the deal price).

8. The deal price fell within the range that BMO's discounted cash flow analysis yielded, but that analysis was seriously flawed in several respects. As an initial matter, it was based on management projections prepared in cooperation with Macquarie, *Sterling Partners' financial advisor*, tainting the projections.

9. Those projections were unreliable. Among other things, the projections modeled cash taxes as high as 300% of income—an absurd and unjustifiable assumption. The projections also included substantial free cash flow growth, including a 200% increase from 2027 to 2028. Yet BMO used a two-stage model, implicitly (and unjustifiably) assuming that Keypath's growth would immediately plummet from 200% to a perpetual growth rate of 2.5%–4.5% in 2029 into perpetuity. Even then, BMO was only able to justify the deal price by applying an extraordinarily high 17%–21% discount rate, which was generated by errors in calculating the weighted average cost of capital ("WACC"). Any proper analysis would have demonstrated the truth: the deal price substantially undervalued Keypath.

10. Defendants solicited stockholder support for the Merger through a materially deficient Proxy which, among other things, declined to report that the Special Committee had initially sought A\$1.00 in merger consideration, only to cave

to a lower price following Sterling Partners' threat to their D&O insurance. On the basis of that deficient Proxy, the Merger was approved with only a slim majority of just over 57% of unaffiliated stockholders casting votes in favor of the Merger.

11. Plaintiffs were among the largest investors in Keypath prior to the Merger, with Plaintiff Copia being the single largest stockholder other than Sterling Partners. Following a books-and-records investigation, Plaintiffs bring this action on behalf of themselves and all other similarly situated former investors in Keypath, asserting claims for breach of fiduciary duty against: (i) the Sterling Partners Entities in their collective capacity as a controlling stockholder; (ii) the Sterling Partners-affiliated members of the Keypath Board (Defendants Hoehn-Saric and Epstein) in their capacity as directors; and (iii) Keypath's CEO (Defendant Fireng) in his capacity as a director and officer. Plaintiffs seek to recover for the harm they and other stockholders incurred as a result of Defendants' breaches of fiduciary duty.

PARTIES

12. Plaintiff Copia Investment Partners Ltd. ("Copia") was a beneficial owner of CDIs representing a beneficial ownership interest in Keypath's common stock. Copia's CDIs were exchanged for A\$0.87 per share in cash when the Merger closed. Copia is an investment firm headquartered and organized in Australia. Upon information and belief, Copia was Keypath's largest single stockholder other than Sterling Partners.

13. Plaintiff Maso Capital Investments Limited (“Maso”) was a beneficial owner of CDIs representing a beneficial ownership interest in Keypath’s common stock. Maso’s CDIs were exchanged for A\$0.87 per share in cash when the Merger closed. Maso is an investment firm based in Hong Kong and organized in the Cayman Islands.

14. Plaintiff Blackwell Partners LLC – Series A (“Blackwell”) was a beneficial owner of CDIs representing a beneficial ownership interest in Keypath’s common stock. Blackwell’s CDIs were exchanged for A\$0.87 per share in cash when the Merger closed. Blackwell is a qualified institutional buyer.

15. Plaintiff Star V Partners LLC (“Star”) was a beneficial owner of CDIs representing a beneficial ownership interest in Keypath’s common stock. Star’s CDIs were exchanged for A\$0.87 per share in cash when the Merger closed. Star is a qualified institutional buyer.

16. Defendant Sterling Fund Management, LLC is a Delaware limited liability company. Sterling Fund Management, LLC is the ultimate controller and buyer of Keypath. Sterling Partners’ Keypath shares were held directly by AVI Mezz Co., L.P. on behalf of Sterling Capital Partners IV, L.P. and SCP IV Parallel, L.P. Those latter two funds, Sterling Capital Partners IV, L.P. and SCP IV Parallel, L.P., are collectively the “SCP IV Funds.” Sterling Fund Management, LLC is an investment manager that advised and managed the SCP IV Funds.

17. Defendant Sterling Capital Partners IV, L.P. is a Delaware limited partnership. Sterling Partners' Keypath shares were held directly by AVI Mezz Co., L.P. on behalf of Sterling Capital Partners IV, L.P. and SCP IV Parallel, L.P.

18. Defendant SCP IV Parallel, L.P. is a Delaware limited partnership. Sterling Partners' Keypath shares were held directly by AVI Mezz Co., L.P. on behalf of Sterling Capital Partners IV, L.P. and SCP IV Parallel, L.P.

19. Defendant AVI Mezz Co., L.P. is a Delaware limited partnership that directly held Sterling Partners' Keypath shares. Sterling Capital Partners IV, L.P. is AVI Mezz Co., L.P.'s general partner.

20. Defendant M. Avi Epstein was a director of Keypath at all relevant times until the Merger closed. Epstein is, and at all relevant times was, the Chief Operating Officer and General Counsel of Sterling Partners, making him a dual-fiduciary.

21. Defendant R. Christopher Hoehn-Saric was a director of Keypath at all relevant times until the Merger closed. Hoehn-Saric co-founded Sterling Partners in 1983 and is, and at all relevant times was, a Managing Director of Sterling Partners, making him a dual-fiduciary.

22. Defendant Steve Fireng was a director of Keypath at all relevant times until the Merger closed. He also served as Keypath's Chief Executive Officer at all relevant times.

RELEVANT NON-PARTIES

23. Macquarie is a division of Macquarie Group Limited, a global investment banking firm headquartered in Sydney, Australia. Macquarie worked with Keypath management to prepare financial projections in connection with the Merger. Macquarie was also Sterling Partners' financial advisor in connection with the Merger.

24. BMO Capital Markets Corp. ("BMO") is an investment banking subsidiary of the Bank of Montreal. BMO was a financial advisor to the Special Committee in connection with the Merger. From November 2021 to May 2024, BMO and its affiliates provided Sterling Partners with commercial banking and trading services, earning approximately \$4.3 million for these services.

25. Katten Muchin Rosenman LLP ("Katten") is a global law firm headquartered in Chicago, Illinois. Katten represented Keypath as legal counsel in connection with the Company's IPO and continued to represent Keypath through the close of the Merger. Katten was also legal counsel to the Special Committee formed in connection with the Merger. Before the IPO, Katten served as the Company's regular outside corporate counsel, handling debt and equity financings, mergers and acquisitions, and general corporate matters. Katten also frequently represented Sterling Partners and its affiliates and portfolio companies, in a range of areas,

including financings, mergers and acquisitions, securities, corporate governance, tax, employment, and litigation matters.

26. Clayton Utz is an Australian law firm headquartered in Sydney, Australia. Clayton Utz represented Keypath as legal counsel in connection with the Company's IPO and continued to represent Keypath through the close of the Merger. Clayton Utz was also legal counsel to the Special Committee formed in connection with the Merger.

SUBSTANTIVE ALLEGATIONS

A. Keypath's Business

27. Founded in 2014, Keypath is an edtech company. It is one of the largest global edtech companies in the online programs space. Keypath focuses its business on online project management ("OPM"), primarily serving the postgraduate education market of traditional universities. As stated in its most recent Form 10 filing, filed with the SEC on February 26, 2024:

The Company enables universities in Australia, the U.S., Canada, the U.K., Malaysia and Singapore to deliver technology-enabled online degrees and programs driven by market demand. Through end-to-end technology and data-driven service, the Company and its subsidiaries partner with universities to design, launch, and grow online programs that deliver career-relevant skills to address global, social and economic challenges and prepare busy professionals for the future of work.²

² Keypath Form 10 (Feb. 26, 2024) at F-17.

28. On June 1, 2021, the Company conducted its initial public offering on the Australian Stock Exchange (“ASX”) at A\$3.71 per share, raising A\$212.1 million in capital through the issuance of 57.2 million CHESS Depositary Interests (“CDIs”). As explained in the Company’s Form 10, CDIs represent a beneficial ownership interest in Keypath’s common stock:

Our shares of Common Stock are traded on the ASX in the form of CDIs, under the ASX trading code “KED.” Shares of our Common Stock are not traded on the ASX because ASX’s electronic settlement system, known as CHESS, cannot be used for the transfer of securities of issuers incorporated in certain countries, including the U.S. CDIs have been created to facilitate electronic settlement and transfer in Australia for companies in this situation. Legal title to the shares of Common Stock underlying the CDIs is held by an Australian depositary nominee, CHESS Depositary Nominees Pty Ltd.

CDIs are units of beneficial ownership in shares of our Common Stock. Each CDI represents a beneficial interest in one share of Common Stock. The CDI holders receive all direct economic and other benefits of shares of our Common Stock on a 1-for-1 basis. The CDIs may be transmuted into shares of our Common Stock on a 1-for-1 basis at the election of the CDI holder.

There are a number of differences between holding CDIs and shares of Common Stock, including that:

- CDI holders do not have legal title in the underlying shares of Common Stock to which the CDIs relate (as summarized above); and
- CDI holders are not able to vote personally as stockholders at any of our meetings. Instead, CDI holders are provided with a voting instruction form that enables them to instruct the depositary nominee in relation to the exercise of voting rights.

Alternatively, CDI holders can transmute their CDIs into shares of our Common Stock in sufficient time before the relevant meeting, in which case they will be able to vote personally as our stockholders.

29. Following the IPO, Keypath’s relatively low market capitalization and low trading volume resulted in its stock being highly illiquid. In a March 2024 presentation, Macquarie noted: (i) that “Keypath’s low level of liquidity is likely to dampen its stock price indefinitely”; and (ii) that “[r]ealizing liquidity through normal daily trading would take substantial time well above customary public investment durations (e.g. greater than 5 years [for Keypath’s next four largest stockholders after controlling stockholder Sterling Partners]).”

30. Macquarie recognized, however, that the stock’s trading price was not a good indicator of its intrinsic value. Specifically, Macquarie stated in the same presentation: “Despite company performance, Keypath continues to trade at a significant discount to market comps, signaling a disconnect with public investors primarily driven by low trading value, lack of liquidity and overall investor sentiment towards companies that are not meaningfully profitable.”

B. Sterling Partners Controlled Keypath

31. At all relevant times, Sterling Partners has dominated the Company’s business and affairs. Sterling Partners was an early investor in the Company in 2014 and was the Company’s controlling stockholder both immediately before and after

its IPO. Following the Company's IPO, Sterling Partners owned approximately 68% of the Company's outstanding stock. At the time of the Merger, Sterling Partners owned approximately 66% of the Company's outstanding stock.

32. The Company's February 26, 2024 Form 10 acknowledged Sterling Partners' power over the Company's affairs and its potential conflicts of interest, stating that Sterling Partners:

will generally be in a position to control or exert influence over matters relating to us, including the election of directors, the approval of a transaction involving us (including the sale of all or substantially all of our assets or the approval of any merger or other significant corporate transaction), as well as the outcome of matters submitted to meetings of CDI holders on which stockholders can vote.³

The Form 10 further acknowledged that Sterling Partners' ability

to control all matters submitted to the Company's stockholders for approval will limit the ability of other stockholders to influence corporate matters, and, as a result, the Company may take actions that its stockholders do not view as beneficial and/or that adversely affect the Company's stockholders.⁴

33. In addition to its majority stock ownership, Sterling Partners possessed significant contractual rights that further increased its influence over Keypath. On May 10, 2021, Keypath and Sterling Partners entered into a "Relationship Deed"⁵

³ *Id.* at 28.

⁴ *Id.*

⁵ *Id.* at Ex. 10.15.

which provided Sterling Partners with certain rights so long as Sterling Partners held more than 5% of the Company's stock. These rights included, *inter alia*:

- **Sterling Partners' right to appoint directors.** So long as Sterling Partners owned greater than 20% of the Company's stock, Sterling Partners had the right to nominate two directors to the Board, and the Board "must cause the people so nominated to be appointed as directors." If Sterling Partners held between 10% and 20% of the Company's shares, it had the right to appoint one director.
- **Committee membership.** Sterling Partners had the right to appoint one of its Board nominees to the Audit and Risk Committee and People, Performance and Culture Committee of the Board, and any other committees established by the Board.
- **Board meeting timing and location.** Keypath was required to consult with Sterling Partners' Board nominees on the timing and location of Board meetings "acknowledging the location of the Sterling Partners Nominees."
- **Sell down assistance.** Keypath was required to provide certain assistance if Sterling Partners elected to sell any of its Company stock.
- **Information rights.** Keypath was broadly required to provide Sterling Partners with "all information" for the purpose of enabling it "to review, assess and report on the status and performance of the investment in Keypath by Sterling Partners and Keypath's strategic initiatives" and comply with its obligations to investors. So long as Sterling Partners owned no less than 5% of the Company's stock, Keypath was specifically required to provide Sterling Partners copies of monthly and other periodic financial reports prepared by management, along with any information relating to Keypath's business and affairs that was reasonably likely to affect the business, financial performance, risk profile, or reputation of Keypath.

34. Sterling Partners notably exercised its right to appoint directors, ensuring it had direct representation and influence in the Keypath boardroom. Specifically, Sterling Partners exercised its right to appoint two of its top executives to the Company's seven-member Board: (i) Defendant Epstein, General Counsel of Sterling Partners; and (ii) Defendant Hoehn-Saric, a co-founder and Senior Managing Director of Sterling Partners.

35. These rights, together with Sterling Partners' dominant 66% ownership stake and voting control, ensured that Sterling Partners could control Keypath's business and affairs at all relevant times.

C. Amid Erosion In Keypath's Trading Price, Sterling Partners Sets Its Sights On A Take-Private Transaction

36. When Keypath completed its IPO on June 2, 2021, its CDIs traded at A\$3.71 per share. The share price steadily decreased thereafter, falling to A\$0.65 per share at the end of 2022. In a March 14, 2024 presentation to the Special Committee, BMO noted that the share price decline in late 2021 and throughout 2022 was correlated with "broader market sentiment shift away from high-growth, cash-burning business combined with perceived [Keypath] liquidity concerns due to upfront investment required for recently signed programs."

37. Keypath's share price declined even further after the U.S. Department of Education ("DoE") announced new guidance regarding third-party servicers in a

“Dear Colleague Letter” (“DCL”) issued on February 15, 2023. The DCL made sweeping changes to the regulation of agreements between institutions of higher education and third-party servicers (like Keypath) that administer any aspect of federal financial aid. The DCL materially expanded the kinds of third-party arrangements subject to the DoE’s regulation—including most online program managers—requiring compliance with specific contracting, auditing, liability, and reporting requirements. These changes would result in an increase in administrative burdens, costs, and compliance risks for OPMs like Keypath. The costly changes were poorly received by Keypath’s investors. Over the next several months, Keypath’s share price declined from A\$0.60 on February 15, 2023, to a low of A\$0.23 on June 1, 2023.

38. Seeing an opportunity in Keypath’s share price erosion, Sterling Partners set its sights on a take-private. Just eighteen months after the Company’s IPO, discussions about a potential take-private transaction by Sterling Partners had commenced. Specifically, in November 2022, Keypath’s general counsel Eric Israel, along with Keypath’s attorneys at Katten and Clayton Utz, prepared a high-level presentation for the Board on “issues that may arise in a take-private transaction, including one by a controlling stockholder.” The presentation was presented to the Board at a February 23, 2023 meeting, where the Board also requested that Keypath directors Epstein and Hoehn-Saric—both Sterling Partners

appointees to the Board and senior Sterling Partners employees—consider options to assist in enhancing the liquidity of the stock, in response to significant investor frustration concerning illiquidity in the Company’s securities.

39. Months later, at a June 21, 2023 Board meeting, Israel and the Board discussed draft resolutions for the formation of a special committee if a bid were to be received from Sterling Partners. The Proxy states that, at this meeting, “the Board determined that if formed, the Special Committee *would utilize regular Company counsel, Katten and Clayton Utz, as its legal advisors, and not retain separate counsel.*” *MFW*, of course, provides that a Special Committee cannot cleanse a conflicted-controller transaction unless “the Special Committee is empowered to freely select its own advisors[.]”⁶ Thus, this Special Committee could have no cleansing effect because it was handcuffed from its inception.

40. Moreover, Katten and Clayton Utz were both conflicted. Throughout this period, and from at least the time of Keypath’s IPO, Katten and Clayton Utz served as the Company’s primary outside counsel. At the same time, as noted in the Proxy, Katten had regularly represented Sterling Partners and its affiliates and respective portfolio companies in a wide variety of matters. For example, in 2007,

⁶ *Kahn v. M & F Worldwide Corp.* (“*MFW*”), 88 A.3d 635, 639 (Del. 2014), *overruled in limited part on wholly unrelated grounds by Flood v. Synutra Int’l, Inc.*, 195 A.3d 754 (Del. 2018).

Katten represented Sterling Partners and senior management of Educate, Inc. in a \$600 million take-private transaction of Educate, Inc. In 2022, Katten represented Sterling Partners in a merger of its portfolio company Platinum Dermatology Partners with West Dermatology. Notwithstanding these obvious conflicts of interest vis-à-vis Sterling Partners, Katten and Clayton Utz continued to represent Keypath in connection with consideration of a take-private by Sterling Partners.

D. The Board Selects Advisors And Engages In Substantive Economic Discussions

41. Throughout October 2023, the Board held multiple meetings in which potential changes to Keypath’s capital structure were discussed, driven by investor frustration at the highly illiquid nature of the stock and the inability to enter or exit the stock. But it was Sterling Partners, not the Board or Company management, that “conducted certain investigations in regard to alternative structures and opportunities for the Company.” Unsurprisingly, the Sterling Partners-led review ultimately resulted in the view that a take-private by Sterling Partners—and one that benefitted only Sterling Partners and Company insiders—was the best option for the Company.

42. At a Board meeting on October 10, 2023, Epstein advised that a range of options had been and were being considered, including: (i) a “take private” of the Company by Sterling Partners; and (ii) a “take private” on the part of the Company,

with the Company obtaining equity or debt financing from a third party to put a self-tender offer to existing stockholders to buy back stock not held by Sterling Partners or management. Following Epstein's presentation, the Board determined to arrange an initial call with Katten and Clayton Utz to consider the requirements and legal considerations relevant for a potential transaction.

43. On October 19, 2023, the Board held a special meeting regarding a potential transaction to take the Company private, with legal advisors from Katten and Clayton Utz attending. While the minutes reflect that Board Chair Diana Eilert stated the price needed to be acceptable to stockholders, she also acknowledged that the "price needs to be affordable based on what the debt markets will support." In addition, Epstein suggested that *Sterling Partners'* financial advisor, Macquarie, would assist Keypath management in the preparation of a management financial projection model.

44. Then, at a Board meeting on November 6, 2023, Katten advised that preliminary discussions had been held with Sterling Partners' U.S. counsel, Kirkland & Ellis. In addition, the Board finalized Keypath's retention of Macquarie to assist with the preparation of management projections. Thus, the Board approved the retention of a financial advisor (Macquarie) with loyalties to a potential counterparty (Sterling Partners) to assist in the preparation of projections which would be central in setting the value of the Company.

45. At a November 14, 2023 Board meeting, Macquarie reported on its market analysis regarding Keypath’s strategic options, noting a purported “value erosion of around 50% overall across the Ed Tech sector.” Macquarie’s representative highlighted U.S. regulatory uncertainty and challenges faced by Keypath competitors like Wiley, which was purchased, and 2U, which experienced significant debt concerns and a prolonged share price drop. Sterling Partners’ representatives at the meeting stated that Sterling Partners was “not interested in selling to a third party at the current valuation.” Despite the unfavorable market conditions and Sterling Partners’ refusal to consider third-party options, the Board continued its process towards a take-private transaction.

46. The Board met again on November 21, 2023 to discuss strategic alternatives, with Katten and Clayton Utz in attendance. Katten attorney Tom Lamprecht advised: “A special committee will be an important element of the process, even if it does not take a traditional form, such as with regard to separate advisors to the company.” Setting the stage for Keypath’s retention of a financial advisor with as limited an engagement as possible, he further advised: “A fairness opinion will need to be obtained, however this does not have to be cost prohibitive.” This box-checking, “penny wise, pound foolish” arrangement helped ensure that Sterling Partners’ interests were prioritized over those of public investors.

47. On December 7, 2023, Sterling Partners confirmed that Macquarie would serve as its financial advisor in the Merger—rendering Keypath’s retention of Macquarie an obvious conflict of interest. Also on December 7, 2023, Kirkland & Ellis advised Katten that Sterling Partners was focused on a take private transaction (as opposed to a self-tender by the Company) and that Sterling Partners would lead discussions with prospective lenders for the necessary debt financing.

48. Notwithstanding the unfavorable market conditions, Keypath’s actual financial performance during this period was strong. At a Board meeting on December 12, 2023, Defendant Fireng, the Company’s CEO, stated that the Company was on-track to meet its full year revenue and adjusted EBITDA projections and that “trading was trending well.” The Company’s CFO further noted that “the Company continues to have a strong cash position.” Keypath’s strong performance continued into 2024. Fireng reported to the Board in February that “the business has been performing well against expectations” with revenue tracking “towards the higher end of the guidance.” Sterling Partners knew there was a disconnect between the Company’s stock price and its financial performance, and they determined to take advantage.

E. The Board Forms An Underpowered Special Committee

49. The Board delayed forming a Special Committee. Minutes from a January 24, 2024 Board meeting stated that the Board “agreed that establishment of

a Special Committee be deferred until the role of any banks was clarified with Legal Counsel.” On February 21, 2024—months after advisors were hired and Sterling Partners began exploring take private options—the Board established a Special Committee consisting of directors Eilert, Bazzani, Wolford, and Laing.

50. As foreshadowed at the November 14, 2023 Board meeting, however, the Special Committee did not take a “traditional form.” Specifically, the Board prevented the Special Committee from hiring its own independent legal advisors. As stated in the Proxy, “the Board determined the Special Committee should utilize regular Company counsel, Katten and Clayton Utz, as its legal advisors, and not retain separate counsel.” Without pushback, that is what the Special Committee did.

51. Accordingly, from the very outset, the Board failed to satisfy *MFW*’s requirement that a special committee must be empowered to freely select its own advisors.

52. Around this time, the Special Committee also began discussions with BMO Capital Markets to provide a fairness opinion for Sterling Partners’ expected offer, but not to otherwise advise on the potential deal. The Special Committee’s February 25, 2024 meeting minutes discussed the limited nature of BMO’s engagement: “BMO confirmed that their engagement is limited to the provision of a fairness opinion, and that they will not be advising in relation to any pricing negotiations or market outreach—no broader advisory mandate.”

53. Even with BMO's limited role, its conflicts should have disqualified it from serving as an advisor in any capacity. Like Katten, it had enjoyed substantial business from Sterling Partners in recent years—while providing no services to Keypath. As stated in the Proxy:

Between November 1, 2021 and May 20, 2024, BMO and/or certain of its affiliates have provided and currently are providing certain commercial banking, deposit and global markets trading services to Sterling Capital Partners IV, L.P., an affiliate of Parent, for which BMO and its affiliates have received approximately \$4.3 million, and in the future may provide certain financial advisory, investment banking, corporate finance and other services to Parent and/or certain of its affiliates, for which services BMO and/or its affiliates may receive compensation.

BMO was engaged on terms pursuant to which it would receive a \$1 million fee, but only upon the delivery of its fairness opinion.

F. Sterling Partners Makes Its First Offer

54. On February 23, 2024, Sterling Partners sent the Special Committee a letter proposing to acquire all of Keypath's outstanding shares that it did not already own for A\$0.65 per share, "less the per share dollar amount of the aggregate fees and expenses incurred by the Special Committee ... in connection with [the] transaction in excess of a reasonable expense amount to be mutually determined[.]" Advisor fees were a relevant portion of the overall expense to Sterling Partners as there were approximately 61.8 million shares held by unaffiliated stockholders (meaning that an A\$0.65/share offer reflected a total proposal of approximately

A\$40 million or approximately \$26.24 million USD at the then-applicable exchange ratio).

55. The offer contemplated a “rollover at the closing of 100% of the existing shares of Common Stock held by employees of the Company[.]” The offer was also conditioned on secrecy, stating that “[o]ur Proposal is provided on the understanding and condition that its existence, its substance and Sterling Fund’s interest in the Proposal is not disclosed publicly or privately by or on behalf of the Company or its affiliates or any of its respective representatives except on a conditional and ‘as necessary’ basis to its Special Committee, senior management and core advisors or otherwise with the written permission of Sterling Funds.” Finally, the proposal stated that Sterling Partners was not interested in any transaction that would require it to sell its shares.

56. The next day, February 24, 2024, the Special Committee met to discuss the proposal with Amy Henderson, the Company’s deputy general counsel, in attendance.⁷ There is no evidence in the minutes that Henderson was excused or

⁷ The Court can infer that Henderson reported to the Company’s general counsel, Eric Israel. The Court can further infer that Israel reported to the Company’s CEO, Fireng. Section 4.03 of the Company’s operative bylaws provided that “the Chief Executive Officer shall, subject to the provisions of these bylaws and the control of the Board of Directors, have general supervision, direction, and control over the business of the Corporation and over its officers.”

recused for any part of the meeting. The Special Committee agreed that Henderson would “work with . . . Bazzani and . . . Welford to collate a budget[.]” The Proxy did not disclose this meeting.

57. The Special Committee met again the following day, February 25, 2024, with members of Keypath management (Henderson and Eric Israel, the Company’s general counsel), and with representatives of BMO, Katten, and Clayton Utz in attendance. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. The Proxy did not disclose management’s presence at the meeting. Instead, it stated that “[o]n February 25, 2024, the Special Committee held a meeting attended by representatives of Katten, Clayton Utz and BMO.”

58. The minutes of this meeting that were produced in response to Plaintiffs’ books-and-records demands are heavily redacted. They show, however, that BMO emphasized to the Special Committee that its “engagement [was] limited to the provision of a fairness opinion, and that [it would] not be advising in relation to any pricing negotiations or market outreach.” The minutes also reflect that Sterling Partners was eager to speak with Fireng about a rollover of his shares.

Upon information and belief, both Israel and Henderson were full-time employees of the Company and relied on their salaries as their principal source of income. This left them unable to act independently of Sterling Partners, the controller.

59. Two days later, on February 27, 2024, the Company released earnings for the six months ended December 31, 2024.⁸ The earnings were stronger than the market expected: Company management reported revenue figures that were 14% higher year-over-year, guided to the top of its previously issued revenue guidance and increased its adjusted EBITDA guidance. The Company's stock price shot up, increasing by more than 10% on the news of this outperformance.

60. The Special Committee met again on February 29, 2024 with members of Keypath management (Henderson and Israel) and representatives of BMO in attendance. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. The Proxy did not disclose management's presence. Instead, it stated that "[o]n February 29, 2024, the Special Committee held a meeting to discuss BMO's engagement letter and the Special Committee's timeline for BMO's analysis of the Original Proposal."

61. At this meeting, the Company discussed advisor fees. According to the minutes, Katten had suggested its fees could reach \$1.5 million USD and the Special Committee determined that Israel would "explore avenues with Katten for a lower cost approach." The minutes also reflect that the Special Committee discussed

⁸ The Company had not yet filed a Form 10 and was not yet subject to SEC quarterly reporting requirements.

“D&O Run-off insurance” and determined that the “[l]egal team [would] investigate with Mr. Vlerick, Keypath CFO, insurance options for run-off coverage.”

62. According to the minutes, the Special Committee then “discussed the proposed topics to be addressed in a response to the Offer, including price, and discussion regarding the management roll over request, Special Committee fees, certainty of financing and the ability for ‘certain non-management investors’ to have an opportunity to roll over. The Special Committee by majority confirmed its preference to put a written response to Sterling Partners despite the rejection of the Offer[.]”

63. On March 1, 2024, the Company executed an engagement letter with BMO “on behalf of ... the Special Committee.” The engagement letter provided for BMO to be paid a fee of \$1 million upon delivery of a fairness opinion. There is no evidence from the Proxy or the Company’s books-and-records production that BMO provided a conflicts disclosure at this time. Nor is there any evidence that the Special Committee asked for one.

64. The Special Committee met again on March 4, 2024. Members of management (Henderson and Israel) attended, along with BMO and Katten. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. The Proxy did not disclose management’s

presence at the meeting. Instead, it stated that “[o]n March 4, 2024, the Special Committee held a meeting that representatives of Katten and BMO attended.”⁹

65. The minutes reflect that Henderson and Israel were present for a substantive discussion at which “BMO and the Committee discussed the various areas of consideration for BMO in performing their analysis for a fairness opinion, primarily the financial considerations, but also acknowledging non-financial matters such as regulatory risk, management retention and premium analysis.”

66. The minutes also reflect that Israel provided the Special Committee with an update on “feedback received from investors during the recent H1 FY24 roadshow[.] ... Commentary from investors and analysts focu[s]ed on a belief that the stock is currently undervalued in the market, issues with regard to liquidity, and a positive response to break even being achieved a little earlier than anticipated.”

67. Finally, the Special Committee discussed how to respond to Sterling Partners and determined that it would authorize rollover discussions between Sterling Partners and Fireng (Israel’s and Henderson’s boss):

The Committee discussed the proposed topics to be addressed in a response to the Offer, including price, and discussion regarding the management roll over request, Committee fees, certainty of the offer price and requesting further detail regarding the ability for ‘certain non-management investors’ to roll over.

⁹ The Proxy does state that “[t]he Special Committee directed Mr. Israel and representatives from Katten and Clayton Utz to draft a response letter to the Sponsor for its consideration” but does not explain that Israel was present at the meeting.

...

The Committee noted their understanding that Sterling Partners wish to speak with Mr Fireng, the Keypath CEO, as a priority regarding the offer. The preference of the Committee is to focus on whether a fair price for shareholders can actually be reached. However, given Mr Fireng's significance to the Company, and his large Shareholder in the entity, the Committee concluded that it may acceptable and in the best interests of shareholders to permit discussions between the bidder and Mr Fireng, at this time.

68. The Special Committee met again on March 7, 2024 with members of Keypath management (Henderson and Israel), and representatives of BMO, Katten, and Clayton Utz in attendance. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. This meeting was not disclosed anywhere in the Proxy. Minutes of the meeting show that BMO provided a detailed overview of its financial analysis, including that "the preliminary valuation range resulting from [its] DCF valuation work to date was between 0.61 and 0.88 AUD per share / CDI."

69. On March 8, 2024, the Special Committee sent a letter to Sterling Partners, stating that "[t]he Special Committee has received preliminary valuation perspectives from BMO and believes that the Proposal [*i.e.*, the offer to buy Keypath's remaining shares for A\$0.65 per share] is inadequate because it undervalues the Company pursuant to customary valuation methodologies."

70. The letter did not make a specific counterproposal but stated that “an increase in the purchase price is required in order for the Special Committee to again consider the Proposal, and we invite an improved Proposal from Sterling.” The letter also stated that the Special Committee had “budgeted for expenses of approximately US\$2.0 to 2.5 million, which includes anticipated fees for BMO, legal advisors and director fees, but excludes the costs of a D&O tail policy.... We expect any revised Proposal to reflect a fixed price without any reduction for fees and expenses of the Special Committee.” Finally, the letter authorized Sterling Partners to begin rollover discussions with Fireng.

71. The Special Committee met again on March 14, 2024. Members of Keypath management (Israel and Henderson) attended, along with representatives of BMO, Katten, and Clayton Utz. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. The Proxy did not disclose that Israel and Henderson attended this meeting. Instead, it stated that “[o]n March 14, 2024, Ms. Eilert had a call with Mr. Epstein during which they discussed the Special Committee’s position that the Original Proposal was inadequate. Thereafter, the Special Committee held a meeting that representatives of Katten, Clayton Utz and BMO attended. Ms. Eilert summarized her discussion with Mr. Epstein regarding the Special Committee’s rejection of the Original Proposal, and the attendees discussed considerations regarding the

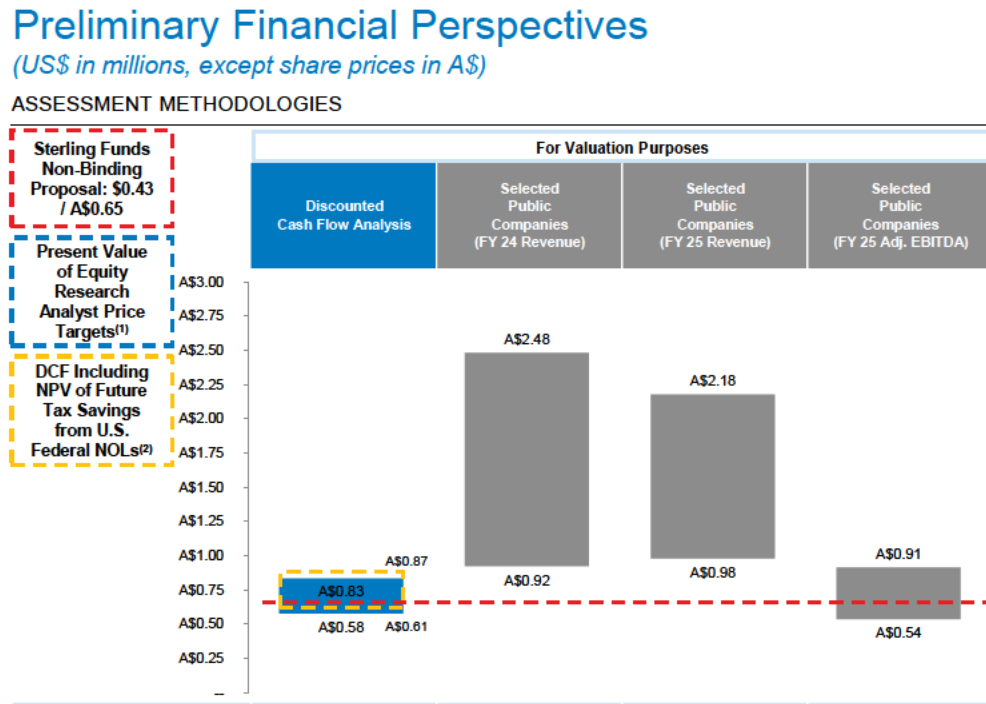
valuation of the Company on a per-share basis in connection with a potential transaction with the Sponsor.”

72. The minutes of the meeting expand on this discussion. They reflect that the Special Committee discussed that “Sterling is receiving advice from Macquarie Bank, although the Committee is not clear what their exact role is.” The minutes also reflect that “BMO informed the Special Committee about a call they received from Macquarie. BMO reiterated that their role with Keypath is limited to providing a fairness opinion and not any other advisory services.” A properly functioning Special Committee would have sought to disqualify Macquarie—which was assisting Keypath in the preparation a financial projections model—from playing both sides.¹⁰ This “non-traditional” Special Committee did not.

73. BMO’s presentation from this meeting provided its “valuation perspectives.” The presentation shows that its DCF analysis yielded a range of

¹⁰ Leo E. Strine, Jr., *Documenting the Deal: How Quality Control and Candor Can Improve Boardroom Decision-Making and Reduce the Litigation Target Zone*, 70 BUS. LAW. 679, 686-87 (2015) (“[I]f the CEO or controlling stockholder has co-opted the company advisors without proper, prior authorization, the board should disqualify them and bar them from doing so. That will set the CEO or controller back on his heels.”).

A\$0.61 to A\$0.83. Its comparables analyses yielded a substantially higher range of values:



74. The minutes reflect that “Israel indicated that management is working with [the insurance broker,] Marsh[,] to determine appropriate D&O runoff insurance for the contemplated transaction and potential cost of said coverage.” The minutes also reflect that “[t]he Committee discussed a further conversation scheduled between the Chair and a representative of the majority shareholder, and identified a number of items for the majority shareholder’s consideration, including the request for a best and final offer and clarity over, or removal, of various conditions identified in the initial Offer. Mr. Israel will assist the Chair with talking points for said discussion.”

G. Another Secret Meeting

75. The Special Committee met again on March 21, 2024 with management (Israel and Henderson) in attendance. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. The minutes also reflect that Malcolm McNab, the Company's Director of Investor Relations, joined partway through. This meeting was not disclosed in the Proxy.

76. According to the minutes, Eilert updated other committee members on "verbal discussions with the majority shareholder," including that (i) "price positions are still very far apart, the Special Committee considers any offer should be in excess of AUD \$1.00 per CDI purchased, whereas Sterling suggests this is not possible" and (ii) "Eilert ha[d] flagged the possible scope of D&O run off insurance costs with the majority shareholder, who were surprised by the significant cost involved." The Special Committee discussed that they would "review the information provided by Keypath's insurance brokers. It was noted that the cost of the policies would be substantial. ... The Committee discussed that carriers will need to be brought into the discussion at some point, particularly with the renewal period approaching."

77. None of this was disclosed in the Proxy.

H. Sterling Partners Makes Its Second Offer

78. On March 22, 2024, Sterling Partners sent a letter to the Special Committee. The letter proposed to purchase the remaining shares of Keypath that Sterling Partners did not already own for A\$0.80 per share—well below the A\$1.00 per share that the Special Committee demanded. In doing so, Sterling Partners used the Board’s need for tail D&O insurance to justify the low offer and requested that the Special Committee “provide a detailed expense budget ... inclusive of your best estimate on director and officer tail policy coverage so that definitive documentation can confirm these matters.” The letter also stated that Sterling Partners would “work with Steve [Fireng] in a broader discussion on a new incentive equity program for senior leadership[.]”

79. The Special Committee met on March 24, 2024 with Keypath management (Israel and Henderson), Katten and BMO in attendance. There is no evidence in the minutes that these conflicted members of management were excused or recused for any of the meeting. The Proxy did not disclose Israel or Henderson’s presence at the meeting. The Proxy stated that “[o]n March 24, 2024, the Special Committee held a meeting to discuss the Revised Proposal. Representatives of

Katten, Clayton Utz and BMO attended.”¹¹ The minutes do not reflect anyone from Clayton Utz attending the meeting. The Proxy also states that “Malcolm McNab, Director of Investor Relations, discussed a counterfactual analysis he was preparing which assumed the potential transaction did not occur and the Company would remain a publicly traded company.” The minutes of the meeting do not reflect McNab’s attendance or any discussion or presentation by him.

80. The minutes of the meeting reflect that the Special Committee discussed Sterling Partners’ latest proposal. The minutes state that “the Committee discussed the requirements for D&O ‘runoff’ insurance if a transaction occurred, and the practice that a 300% rise on current premiums may be anticipated.” With the knowledge that D&O insurance would be costly and Sterling Partners would need to first approve that cost, the minutes state that “[t]he Committee discussed providing a response which named a price minimum for the offer to be acceptable, the Committee discussed that AUD 0.87 would be [the] minimum price that the Committee could consider any offer.” In essence, the Special Committee was willing to accept lower merger consideration in exchange for ensuring its own insurance coverage.

¹¹ Similar to the disclosures for the March 4, 2024 meeting, the Proxy does state that the Special Committee “directed Mr. Israel and representatives from Katten and Clayton Utz to prepare a response to the Revised Proposal,” but it does not disclose Israel’s presence at the meeting.

I. The Special Committee Makes Its Final Counter

81. On March 27, 2024, the Special Committee sent a letter to Sterling Partners, stating: “As conveyed to you in our call on March 26, 2024, the Special Committee will require a price of at least AUD\$0.87 in order to consider proceeding with the proposed transaction.” The letter included an expense breakdown that showed estimated advisor costs ranging from \$2 million to \$2.5 million USD. The expense breakdown further stated that “[a]s the D&O Tail coverage is not an expense of the Special Committee, but rather an expense that will be incurred on behalf of the full Board and the officers, we have not included it in the summary of expenses set forth above. Per the report from Marsh that was shared with the Board earlier this week, if the transaction occurred today, pricing for the D&O Tail coverage is anticipated to be ~200% - 250% of current policy annual premium (our current D&O premium is \$791,063 [USD]). However, please note that the definitive merger agreement will include standard language that the premium for the D&O Tail shall not exceed 300% of the last annual premium paid by the Company for such insurance prior to the date of the definitive merger agreement.”

82. The Special Committee met on March 28, 2024 with Keypath management (Israel and Henderson) in attendance, as well as Katten. There is no evidence in the minutes that these conflicted members of management were excused or recused for any part of the meeting. This meeting is not disclosed in the Proxy.

The minutes state that the Committee discussed “Israel and other senior management’s role in the transaction,” followed by several lines of redacted text:

The Committee discussed Mr Israel and other senior management’s role in the transaction. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83. The minutes state further that “Epstein had expressed concern regarding the cost of D&O tail insurance (being up to 300% of the existing price).”

84. The Special Committee met again on April 4, 2024, with Israel and Henderson attending. The Proxy did not disclose that Israel and Henderson attended this meeting, nor did it disclose any of the substance of the discussion. The Proxy simply stated, “[o]n April 4, 2024, the Special Committee held a meeting to discuss the status of discussions with the Sponsor regarding the price per share of Common Stock in connection with the Merger.”

85. According to the minutes of this meeting, Eilert updated the Special Committee on verbal conversations with Epstein. The minutes state that Epstein referred to “the D&O insurance costs that will be incurred, as matters increasing the cost of transaction for Sterling Funds.” The Special Committee then “discussed the nature of the offer and that the Committee were waiting for a formal response from

Sterling Funds.” The minutes state that Israel and Henderson then left the meeting and the Special Committee then “discussed the potential impact of a stock rollover requirement on senior executives, and the potential cost and impact of senior executives electing to instead sell down some or all of their CDIs in the event of a successful takeover bid for the Company by Sterling Funds.”

86. On April 14, 2024, Sterling Partners sent a letter to the Special Committee accepting the A\$0.87 per share price.

87. On April 18, 2024, the Special Committee met with management (Israel and Henderson), Katten, and Clayton Utz in attendance. The Special Committee resolved to accept the A\$0.87 per share price and to instruct BMO to begin preparing to deliver a fairness opinion.

J. The Parties Finalize An Agreement

88. Over the weeks that followed, the parties’ lawyers exchanged drafts of the Merger Agreement.

89. On April 24, 2024, the Company’s Form 10 filed with the SEC became effective—meaning, among other things, that the Company would become subject to quarterly reporting requirements.

90. On April 25, 2024, Company management delivered updated projections to BMO. According to the Proxy, the projections “included the

expectation that the fiscal year ended June 30, 2024 results would be more favorable than originally anticipated as a result of stronger course enrollments[.]”

91. According to the minutes of an April 29, 2024 meeting, the Special Committee “noted that the Company will be releasing results in coming weeks regardless of the status of the transaction documents, if timing aligned the announcements could be made together, however no guarantee of alignment and results will go out regardless.”

K. BMO Issues An Unconvincing Fairness Opinion And The Board Approves The Merger

92. On May 20, 2024, three months after the Special Committee determined to retain BMO and only three days before it provided a fairness opinion, BMO belatedly provided a conflicts disclosure to the Special Committee. The disclosure noted that in the last two fiscal years and the year to date, BMO had received from Sterling Partners “[a]pproximately \$4.3mm in connection with commercial banking, deposit and global markets trading services[.]”

93. The Special Committee did not even bother to hold a final meeting to hear or discuss BMO’s final fairness analysis. Rather, according to the Proxy, on May 23, 2024, the Company circulated a draft written consent to the members of the Special Committee with a package that included the final BMO presentation. The members of the Special Committee unanimously executed the written consent

approving the Merger and recommending that the full Board approve the Merger. “Following the action taken by the Special Committee, the members of the Board unanimously executed [a] written consent” approving the Merger.

94. BMO’s fairness analysis demonstrates that the price was unfair. BMO’s selected analyst price targets for Keypath ranged from A\$0.67 to A\$1.80. This implies a midpoint of A\$1.235, which is 42% above the A\$0.87 deal price. And its selected revenue multiples based on comparable companies yielded a price for Keypath of A\$0.83 to A\$1.76 (a midpoint of A\$1.30) based on FY24 revenue, and A\$0.97 to A\$1.66 (a midpoint of A\$1.32) based on FY25 revenue. Both of these valuations are well above the A\$0.87 deal price.

95. BMO’s discounted cash flow yielded a valuation range of A\$0.62-A\$0.87 but that analysis was flawed in multiple respects. For one thing, BMO used management projections that, as noted above, management had developed with the help of Macquarie, which was Sterling Partners’ financial advisor. The free cash flow projections are particularly suspicious because they subtract unusually high cash taxes—even in years when there is negative income. For example, in the table below, BMO modeled \$1M of taxes being paid in 2024 when the Company had

negative pre-tax income. In the following years, moreover, BMO modeled taxes as high as 300% of income:

BMO 

Discounted Cash Flow Summary

(US\$ in millions, except share prices in A\$)

PROJECTED FREE CASH FLOWS

		Fiscal Year Ending June 30,					
	2023A	Q4 24E ⁽¹⁾	2025P	2026P	2027P	2028P	Terminal ⁽²⁾
Revenue	\$124	\$35	\$147	\$161	\$177	\$197	\$197
Annual Growth (%)	--	n.a.	6%	10%	10%	11%	--
EBITDA ⁽³⁾	--	\$1	\$7	\$11	\$21	\$33	\$33
Margin (%)	--	2%	5%	7%	12%	17%	17%
EBIT	--	(\$1)	\$1	\$5	\$13	\$25	\$26
Less: Other Expenses ⁽⁴⁾	--	(0)	(0)	(0)	(0)	(0)	(0)
Pre-Tax Income	--	(\$1)	\$1	\$4	\$13	\$25	\$26
Less: Cash Taxes	--	(1)	(3)	(4)	(5)	(5)	(5)
After-Tax Income	--	(\$2)	(\$2)	\$0	\$8	\$20	\$20
Plus: D&A	--	1	6	7	7	8	7
Less: Capex	--	(1)	(6)	(7)	(8)	(8)	(8)
Less: Increase in Net Working Capital & Other ⁽⁵⁾	--	(4)	(3)	(5)	(2)	(1)	--
Unlevered Free Cash Flow	--	(\$6)	(\$5)	(\$4)	\$6	\$18	\$19

96. The projections in the above table also show that, in 2028, the Company was expected to generate \$18 million USD in free cash flow, a 200% increase over the \$6 million USD in 2027 free cash flow. Thus, the Company clearly was not expected to have achieved steady-state growth—which typically is mid-to-high single digit growth—within the discrete period. The Company would likely take many more years to slow its growth to that rate. Yet BMO's valuation used a two-stage discounted cash flow model, which simply assumed that, after 2028, growth would immediately plummet from 200% to a perpetuity growth rate of 2.5% to 4.5%.

This was an unreasonable assumption that ignored many additional years of higher free cash generation that should be included in the valuation.¹²

97. Finally, BMO's discounted cash flow analysis used an exceedingly high 17% to 21% discount rate. There are three problems in the weighted average cost of capital (WACC) calculation that cause the discount rate to be too high and the resulting valuation to be too low.

98. *First*, BMO used a 7.17% equity risk premium. It did not clearly explain why it selected this number, but that figure is meaningfully higher than the correct number based on supply-side historical premium which is 6.35%.

99. *Second*, BMO added a hefty 4.7% size premium to its discount rate. The empirical support for the use of size premia is questionable, and the Court of Chancery has recently cautioned against their use.¹³

100. *Third*, BMO looks to nine peer companies in calculating Keypath's beta. Using these nine companies that have an average beta of 1.37, BMO sets beta for Keypath in a range of 1.1 to 1.65. But earlier in the same presentation, BMO

¹² *Merion Capital, L.P. v. 3M Cogent, Inc.*, 2013 WL 3793896, at *22 (Del. Ch. July 8, 2013) ("Damodaran notes that the three-stage model is best suited for a firm whose earnings are growing at very high rates, are expected to continue growing at those rates for an initial period, but are expected to start declining gradually toward a stable rate as the firm become[s] large and loses its competitive advantages.") (cleaned up).

¹³ *HBK Master Fund L.P. v. Pivotal Software, Inc.*, 2023 WL 10405169, at *39 (Del. Ch. Aug. 14, 2023).

concedes that seven of these peer companies are not really comparable to Keypath. Using the two remaining companies—Grand Canyon Education and 2U, Inc—implies a peer beta well below 1.

101. The Court can also infer that the price is unfair because of the history of the negotiations. As set forth above, Sterling Partners linked together the price that it would pay for public stockholders' shares to the cost of runoff D&O insurance for the members of the Special Committee and other directors. That additional cost—approximately \$2.4 million¹⁴—reflected approximately 4.8% of the \$50 million in total funds that Sterling Partners required to complete the Merger. The Special Committee plainly got the message: it immediately dropped from its A\$1.00 per share offer to a bottom line of A\$0.87 per share.

102. The Company announced the Merger on May 24, 2024. That same day, the Company released its earnings for the third quarter of fiscal year 2024, showing year-over-year revenue growth of 8.6%. In its earnings release, the Company raised its full-year guidance range for fiscal year 2024 to:

- \$137 million to \$139 million USD in revenue (an increase from the previous guidance, given in February 2024: that the Company would be at the “upper end” of \$130 million to \$135 million USD); and

¹⁴ As set forth above, Sterling Partners agreed to pay up to 3 times the annual premiums of \$791,063 to cover run-off insurance.

- \$2 million to \$4 million USD in Adjusted EBITDA (an increase from the previous guidance: that the Company’s Adjusted EBITDA would be \$0 to \$2 million USD).

L. Defendants Solicit Stockholder Votes Through A Misleading Proxy

103. On August 8, 2024, the Company issued the definitive Proxy soliciting stockholder support for the Merger. The Individual Defendants approved the Proxy in their capacity as directors and had a fiduciary duty to ensure that the Proxy disclosed all material facts to stockholders.

104. Sterling Partners, as the Company’s controlling stockholder, had a duty of candor to stockholders. It was also contractually required to ensure that the Proxy provided accurate disclosures of all material facts. Section 5.3(a) of the Merger Agreement provided that “[e]ach of the Company and [Sterling Partners] shall furnish all information concerning itself and its Affiliates that is required to be included in the Proxy Statement and Schedule 13E-3 or that is customarily included in proxy statements or Rule 13E-3 transaction statements prepared in connection with transactions of the type contemplated by this Agreement and shall ensure that the Proxy Statement and Schedule 13E-3 complies in all material respects with the requirements of all applicable Laws.”

105. The Proxy was materially misleading and incomplete in several critical respects.

106. *First*, as noted above, the Proxy failed to disclose the Special Committee’s first counterproposal to Sterling Partners: that “any offer should be in excess of AUD \$1.00 per CDI purchased[.]” The Special Committee “made its proposal at a point in the negotiations when it had sufficient financial information to make a serious offer.... [S]tockholders were entitled to know the price that the Special Committee proposed.”¹⁵

107. *Second*, the Proxy repeatedly made misleading partial disclosures by identifying most of the participants in Special Committee meetings while omitting the conflicted members of management who were present. As noted above, the Proxy:

¹⁵ *In re Dell Techs. Inc. Class V Stockholders Litig.*, 2020 WL 3096748, at *40 (Del. Ch. June 11, 2020); *see also In re S. Peru Copper Corp. S'holder Derivative Litig.*, 52 A.3d 761, 794–95 (Del. Ch. 2011) (“The Proxy Statement left out a material step in the negotiation process, to wit, the Special Committee's July counteroffer, offering to give Grupo Mexico only \$2.095 billion worth of Southern Peru stock for Minera in response to Grupo Mexico's ask of \$3.1 billion in its May 7, 2004 term sheet.... The minority stockholders were being asked to make an important voting decision about an acquisition that would nearly double the size of the Company and materially increase the equity stake of the controlling stockholder—they should have been informed of the value that the Special Committee placed on Minera at a point in the negotiations when it had sufficient financial information to make a serious offer.”), *aff'd sub nom. Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012); *Goldstein v. Denner*, 2022 WL 1671006, at *20–21 (Del. Ch. May 26, 2022) (“For purposes of *Corwin* cleansing, when the issue is something as important as a meeting where the target and the bidder discussed the transaction price, a stockholder should be able to rely on the company's disclosures for an accurate, full, and fair characterization of the meeting. It is reasonably conceivable that the Schedule 14D-9's failure to identify the price was a material omission.”).

- Failed to disclose the Special Committee’s February 24, 2024 meeting at all, let alone the fact that Henderson attended.
- Stated that “[o]n February 25, 2024, the Special Committee held a meeting attended by representatives of Katten, Clayton Utz and BMO” without disclosing that Israel and Henderson also attended.
- Stated that “[o]n February 29, 2024, the Special Committee held a meeting to discuss of BMO’s engagement letter and the Special Committee’s timeline for BMO’s analysis of the Original Proposal” without disclosing that Israel and Henderson also attended.
- Stated that “[o]n March 4, 2024, the Special Committee held a meeting that representatives of Katten and BMO attended” without disclosing that Israel and Henderson also attended.¹⁶
- Failed to disclose the Special Committee’s March 7, 2024 meeting at all, let alone that Israel and Henderson were also present for BMO’s overview of its detailed valuation analysis.
- Stated that “[o]n March 14, 2024, Ms. Eilert had a call with Mr. Epstein during which they discussed the Special Committee’s position that the Original Proposal was inadequate. Thereafter, the Special Committee held a meeting that representatives of Katten, Clayton Utz and BMO attended” without disclosing that Israel and Henderson also attended.
- Failed to disclose the Special Committee’s March 21, 2024 meeting at all, let along that Israel and Henderson were present.
- Stated that “[o]n March 24, 2024, the Special Committee held a meeting to discuss the Revised Proposal. Representatives of Katten,

¹⁶ The Proxy does state that “[t]he Special Committee directed Mr. Israel and representatives from Katten and Clayton Utz to draft a response letter to the Sponsor for its consideration” but does not explain that Israel was present at the meeting.

Clayton Utz and BMO attended” without disclosing that Israel and Henderson also attended.¹⁷

- Failed to disclose the Special Committee’s March 28, 2024 meeting at all, let alone that Israel and Henderson were present.
- Stated that “[o]n April 4, 2024, the Special Committee held a meeting to discuss the status of discussions with the Sponsor regarding the price per share of Common Stock in connection with the Merger” without disclosing that Israel and Henderson also attended.

108. This was material information that reasonable stockholders would have wanted to know.

109. *Third*, the Proxy failed to disclose anything about the way that Sterling Partners and the Special Committee interlinked the overall deal price and the provision of run-off D&O insurance to members of the Special Committee and the rest of the Board. This was a material conflict about which reasonable stockholders would have wanted to know.

110. The stockholder vote took place on September 4, 2024. Stockholders narrowly approved the Merger with only 57.4% of the eligible outstanding shares of minority stockholders voting to approve the Merger.

¹⁷ Similar to the disclosures for the March 4, 2024 meeting, the Proxy does state that the Special Committee “directed Mr. Israel and representatives from Katten and Clayton Utz to prepare a response to the Revised Proposal,” but it does not disclose Israel’s presence at the meeting.

111. The Merger closed on September 11, 2024. Public investors received A\$0.87 per share in cash, while insiders including the Sterling Partners Entities, Fireng, and Israel rolled over their investments into the newly-private Company.

CLASS ACTION ALLEGATIONS

112. Plaintiffs bring this action pursuant to Court of Chancery Rule 23, on behalf of themselves and all other holders of Keypath common stock (including CDIs) whose Keypath shares/CDIs were exchanged for cash at the closing of the Merger (except Defendants and any persons who were officers or directors of Keypath as of the closing of the Merger) (the “Class”).

113. This Action is properly maintainable as a class action.

114. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

115. The Class is so numerous that joinder of all members is impracticable. As of the record date for unaffiliated stockholders to approve the Merger, Keypath had over 61.8 million shares held by unaffiliated stockholders, presumably held by thousands of holders throughout the nation and the world.

116. The case presents questions of law and fact that are common to all Class members and predominate over any questions affecting only individuals, including, but not limited to:

(a) Whether Defendants breached their fiduciary duties to the Class;

- (b) Whether Defendants disclosed all material information to the Class before the vote to approve the Merger;
- (c) Whether the Class was harmed by the Defendants' conduct; and
- (d) Whether the Class is entitled to equitable relief.

117. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

118. Plaintiffs' claims and defenses are typical of claims and defenses of other Class members, and Plaintiffs have no interests antagonistic or adverse to the interests of other Class members. Plaintiffs are adequate representatives to protect the interests of the Class.

119. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class, and accordingly incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of other Class members or substantially impair or impede their ability to protect their interests.

120. Defendants have acted in a manner that affects Plaintiffs and all members of the Class alike, thereby making appropriate equitable relief with respect to the Class as a whole.

COUNT I

Direct Claim Against the Sterling Partners Entities for Breach of Fiduciary Duty As Controlling Stockholder

121. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

122. As a controlling stockholder, the Sterling Partners Entities owed fiduciary duties to Plaintiffs and the Class.

123. Sterling Partners breached those duties by negotiating and entering into the Merger based on a process and at a price that was unfair to Plaintiffs and the Class, including by failing to disclose all material facts to Plaintiffs and the Class.

124. Plaintiffs and the Class have been damaged and have no adequate remedy at law.

COUNT II

Direct Claim Against the Individual Defendants for Breach of Fiduciary Duty As Directors

125. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

126. The Individual Defendants owed fiduciary duties to Plaintiffs and the Class in their capacity as directors.

127. The Individual Defendants breached those duties by negotiating and entering into the Merger based on a process and at a price that was unfair to Plaintiffs

and the Class, including by failing to disclose all material facts to Plaintiffs and the Class.

128. Plaintiffs and the Class have been damaged and have no adequate remedy at law.

COUNT III

Direct Claim Against Fireng for Breach of Fiduciary Duty As An Officer

129. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

130. Section 6.01 of the Company's certificate of incorporation operative at the time of the Merger provided exculpation only for directors. It did not purport to exculpate officers:

Section 6.01 Limitation of Liability. To the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated to the fullest extent permitted by the General Corporation Law of Delaware, as so amended. No amendment to, modification of, or repeal of this Section 6.01 shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

131. Fireng owed fiduciary duties to Plaintiffs and the Class in his capacity as an officer.

132. Fireng breached those duties by negotiating and entering into the Merger based on a process and at a price that was unfair to Plaintiffs and the Class, including by failing to disclose all material facts to Plaintiffs and the Class.

133. Plaintiffs and the Class have been damaged and have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray the Court to:

- a. Declare that this Action is properly maintainable as a class action;
- b. Certify Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- c. Declare that Defendants breached their fiduciary duties;
- d. Award Plaintiffs and the Class actual, nominal, rescissory, and/or quasi-appraisal damages together with pre- and post-judgment interest thereon;
- e. Awarding Plaintiffs and the Class their attorneys' fees and costs; and
- f. Granting such other and further relief as may be just and equitable in the circumstances.

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(pro hac vice motions forthcoming)

November 20, 2024

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