

Part II Organizational Action *(continued)*

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ▶ [See attachment.](#)

Blank lines for listing Internal Revenue Code sections.

18 Can any resulting loss be recognized? ▶ [See attachment.](#)

Blank lines for providing information on resulting loss recognition.

19 Provide any other information necessary to implement the adjustment, such as the reportable tax year ▶ [See attachment.](#)

Blank lines for providing other necessary information.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here
Signature ▶  Date ▶ 14-Jan-2022
Print your name ▶ Rebecca Hazard Title ▶ SVP, General Counsel

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶				Firm's EIN ▶
	Firm's address ▶				Phone no.

Riverbed Technology LLC
Attachment to Form 8937
Report of Organizational Actions Affecting Basis of Securities

The information contained in Form 8937 and this attachment does not constitute tax advice and does not purport to take into account any shareholder's or note holder's specific circumstances. Shareholders and note holders are urged to consult their own tax advisors regarding U.S. tax consequences of the transactions described herein and the impact to tax basis resulting from such transactions.

Additional information relating to Riverbed Technology, Inc.'s bankruptcy can be found at <https://cases.stretto.com/riverbed/>.

Unless otherwise described herein, capitalized terms are defined as used in the Amended Joint Prepackaged Chapter 11 Plan of Reorganization of Riverbed Technology, Inc. and its Debtor Affiliates (the "Plan").

Form 8937, Part I, Line 10

Classification and Description (Line 9)	CUSIP Number (Line 10)	Serial Number (Line 11)	Ticker Symbol (Line 12)	Account Number (Line 13)
First Lien Credit Agreement (third amendment term loan)	76857MAJ4			
First Lien Credit Agreement (2020 extended term loan)	76857MAK1			
Second Lien Credit Agreement	76857MAM- 7			
Exit Facility Term Loan				
Second Lien New Common Equity				
First Lien Convertible Preferred Equity				

Form 8937, Part II, Line 14

On November 16, 2021, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The cases are being jointly administered under the caption In re: Riverbed Technology, Inc., *et al.*, Case No. 21-11503. On December 4, 2021, the Court entered into an order confirming the Plan. The Plan became effective on December 7, 2021 (the “Effective Date”).

As of the end of the day before the Effective Date, Riverbed Parent, Inc. (“Parent”) owned all of the stock of Riverbed Holdings, Inc. (“Holdings”), and Holdings owned all of the stock of Riverbed Technology, Inc. and all of the membership interests of Riverbed Intermediate Holdings, LLC (“Intermediate Holdings”), a disregarded entity for U.S. federal income tax purposes.

On the Effective Date and pursuant to the Plan, Riverbed Technology, Inc., converted to a Delaware limited liability company named Riverbed Technology LLC, a disregarded entity for U.S. federal income tax purposes, and, thereafter, Holdings contributed all of its membership interests in Riverbed Technology LLC to Intermediate Holdings. Thereafter, and also on the Effective Date and pursuant to the Plan, in the following order: (1) all Interests in Parent and Holdings were cancelled without any distribution or other recovery to the Holders thereof on account of such Interests, and (2) the Debtors made payments and distributions to applicable Holders of Claims as required pursuant to the Plan, with, as is relevant to this Form 8937, (a) each Holder of an Allowed First Lien Secured Claim receiving, in full and final satisfaction of its Allowed First Lien Secured Claim, (i) payment in full in Cash of all accrued and unpaid interest as of the Effective Date on such Holder’s First Lien Loans, (ii) its Pro Rata share of the Exit Facility Term Loan (issued by Riverbed Technology LLC), and (iii) First Lien Convertible Preferred Equity (issued by Holdings) with an initial liquidation preference equal to the aggregate principal amount of such Holder’s

First Lien Loans less the aggregate original principal amount of Exit Facility Term Loan received by such Holder, and (b) each Holder of an Allowed Second Lien Secured Claim receiving, in full and final satisfaction of its Allowed Second Lien Secured Claim, its Pro Rata share of the Second Lien New Common Equity (issued by Holdings).

Form 8937, Part II, Lines 15 and 16

The basis of the non-cash consideration received by Holders of Allowed First Lien Secured Claims and Holders of Allowed Second Lien Secured Claims will depend, in part, on whether, for U.S. federal income tax purposes, (a) the Claim surrendered constitutes a “security” of a Debtor, and (b) the consideration received constitutes stock or a “security” of the same entity against which the Claim is asserted (or, an entity that is a “party to a reorganization” with such entity).

Neither the Internal Revenue Code of 1986, as amended (the “Code”) nor the Treasury Regulations promulgated thereunder define the term “security.” Whether a debt instrument constitutes a “security” is determined based on all relevant facts and circumstances, but most authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that the instrument is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, the convertibility of the instrument into an equity interest of the obligor, whether payments of interest are fixed, variable, or contingent, and whether such payments are made on a current basis or accrued.

While the position is not free from doubt, the Reorganized Debtors intend to take the position that the First Lien Secured Claims, the Second Lien Secured Claims, and the Exit Facility Term Loan are all securities for U.S. federal income tax purposes. Furthermore, the Reorganized Debtors intend to take the positions that: (1) the distributions of consideration to Holders of Claims, taken together with the conversion of Riverbed Technology, Inc. to Riverbed Technology LLC (a disregarded entity for U.S. federal income tax purposes), are treated as a reorganization described in section 368(a)(1)(G) of the Code, and (2) the Plan constitutes a “plan of reorganization” within the meaning of section 368(a)(3)(B)(ii) of the Code. Accordingly, the Reorganized Debtors intend that Holders of Allowed First Lien Secured Claims and Holders of Allowed Second Lien Secured Claims be treated as exchanging their Claims in a corporation that is a party to a reorganization for stock (in the case of Holders of Allowed Second Lien Secured Claims) or stock and securities (in the case of Holders of Allowed First Lien Secured Claims) of a corporation a party to such reorganization. The remainder of this discussion assumes that the foregoing applies.

First Lien Secured Claims

With respect to a Holder of an Allowed First Lien Secured Claim, the basis of the Exit Facility Term Loan and First Lien Convertible Preferred Equity received should be the same as the Holder’s basis in its Claim exchanged therefor (excluding any amounts attributable to accrued but untaxed interest on the applicable existing Claim), decreased by the amount of Cash received (excluding the amount treated as received in satisfaction of accrued but untaxed interest), and increased by the amount of gain recognized by such Holder on such exchange, with such basis allocated among the Exit Facility Term Loan and First Lien Convertible Preferred Equity in proportion to the fair market values of such stock and debt (with “issue price” (as described below) utilized to determine the fair market value of the debt). A Holder of an Allowed First Lien Secured Claim should recognize gain to the extent of the lesser of (a) the amount of Cash received (excluding the amount treated as received in satisfaction of accrued but untaxed interest), and (b) (i) the

sum of (1) the fair market value of the First Lien Convertible Preferred Equity received, (2) the amount of Cash received (excluding the amount treated as received in satisfaction of accrued but untaxed interest), and (3) the issue price of the Exit Facility Term Loan received, minus (ii) such Holder's adjusted tax basis in its Allowed First Lien Secured Claim.

Allocation of Basis Between Exit Facility Term Loan and Convertible Preferred Equity - Determination of "Issue Price" of Exit Facility Term Loan - Application of Investment Unit Rules

As a general matter, and subject to the "investment unit" rules discussed below, in determining the "issue price" of a debt instrument, if a substantial amount of the debt instruments in an issue is issued for money, the issue price of each debt instrument in the issue is the first price at which a substantial amount of the debt instruments is sold for money. The Exit Facility Term Loan was not issued for money.

Where a debt instrument was not issued for money, but is traded on an "established market," the issue price of each debt instrument in the issue is the fair market value of the debt instrument, determined as of the issue date. Property is traded on an "established market" for such purposes if, at any time during the 31-day period ending 15 days after the issue date, there is a sales price for the property (in which case such sales price generally determines the fair market value), there are one or more "firm quotes" for the property (which generally determine the fair market value if there are no sales), or there are one or more "indicative quotes" for the property (which generally determine the fair market value if there are neither sales nor firm quotes, subject to certain exceptions that the Reorganized Debtors do not expect to apply here).

We are unaware of any actual sales of the Exit Facility Term Loan within the 31-day period ending 15 days after the issue date. In general, a firm quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the quoted price is substantially the same as the price for which the person receiving the quoted price could purchase or sell the property. An indicative quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the price quote is not a firm quote.

The Reorganized Debtors expect to take the position that the Exit Facility Term Loan is traded on an established market because there are firm quotes and/or indicative quotes for the Exit Facility Term Loan during the 31-day period ending 15 days after the issue date of the Exit Facility Term Loan. An average of quotes (as opposed to trading prices) from certain investment banks for the Exit Facility Term Loan is provided below for informational purposes only. Based on such quotes, the Reorganized Debtors expect to take the position that the Exit Facility Term Loan has an issue price of 97.06 (the sum of the quotes below (1067.7) divided by the number of days (11) for which there are quotes).

	12/8/21	12/9/21	12/10/21	12/11/21	12/12/21	12/13/21	12/14/21	12/15/21
Exit Facility Term Loan	94.6	96.7	96.9	N/A (weekend)	N/A (weekend)	97.1	97.3	97.3

	12/16/21	12/17/21	12/18/21	12/19/21	12/20/21	12/21/21	12/22/21
Exit Facility Term Loan	97.3	97.9	N/A (weekend)	N/A (weekend)	97.5	97.6	97.5

The Reorganized Debtors will, in accordance with Treasury Regulations section 1.1273-2(f)(9), make their official determination of the issue price of the Exit Facility Term Loan available to holders thereof within 90 days of the issuance date of the Exit Facility Term Loan. The Reorganized Debtors' determination of the issue price will be binding on holders thereof unless the holder explicitly discloses that its determination is different from the Reorganized Debtors' determination. The Reorganized Debtors reserve the right to determine an issue price of the Exit Facility Term Loan other than 97.06 in connection with complying with Treasury Regulations section 1.1273-2(f)(9), and if so, the Reorganized Debtors will publish an amendment to this form.

Where, as here, a Holder that receives debt instruments also receives other property (e.g., First Lien Convertible Preferred Equity) in exchange for their Claims, the "investment unit" rules may apply to the determination of the "issue price" for any such debt instrument received in exchange for their Claims. In general, if all of the components (other than cash) of the "investment unit" were issued for cash and/or are traded on an established market, then the issue price of the investment unit, as a whole, is determined as the aggregate of the fair market value of each of the components of the investment unit; the issue price of the investment unit is then allocated to each of the investment unit's components on the basis of each component's fair market value, and that allocation determines the issue price of the debt components of the investment unit.

If none of the components of the "investment unit" were issued for cash or traded on an established market, then the trading price of the debt exchanged therefor would determine the "issue price" of the investment unit.

The application of the investment unit rules is somewhat unclear to the situation presented here. As noted above, the Reorganized Debtors expect to take the position that the Exit Facility Term Loan is traded on an established market. With respect to the Convertible Preferred Equity, the Reorganized Debtors believe that there are at least indicative quotes, such that, without more, the Reorganized Debtors would likely take the position that the Convertible Preferred Equity is also traded on an established market, such that the "issue price" of the investment unit would collectively be determined by the sum of the trading values of the Exit Facility Term Loan and the Convertible Preferred Equity. However, that analysis is complicated by, and ultimately overridden by, the New Money Investment.

On the Effective Date, pursuant to the New Money Investment, Holdings issued Convertible Preferred Equity (the same preferred stock as the First Lien Convertible Preferred Equity) in the form of the New Money Convertible Preferred Equity to the New Money Commitment Parties in exchange for \$100 million. The New Money Convertible Preferred Equity comprises (1) Convertible Preferred Equity sold to all of the New Money Commitment Parties at par with an initial liquidation preference of \$100 million (the "Purchased Convertible Preferred") and (2) Convertible Preferred Equity issued to certain of the New Money Commitment Parties (who bought 90% of the Purchased Convertible Preferred) in the form of a commitment fee with an initial liquidation preference of \$15 million (the "Commitment Fee Convertible Preferred"). Thus, the New Money Convertible Preferred Equity has an initial liquidation preference of \$115 million, with the Commitment Fee Convertible Preferred constituting 16.667% of the Purchased Convertible Preferred purchased by the New Money Commitment Parties that received their commitment fee in the form of the Commitment Fee Convertible Preferred (i.e., \$15 million divided by \$90 million). Certain participants, in lieu of receiving their commitment fee in the form of the Commitment Fee Convertible Preferred, elected to receive a commitment fee in the form of the property described in section IV.D.3 of the Plan.

In light of the New Money Investment, the Reorganized Debtors expect to take the position that the New Money Investment itself determines the "issue price" of all of the Convertible Preferred Equity for purposes of applying the investment unit rules. Under principles similar to those for determining the issue price of

a debt instrument issued as part of an investment unit, the Reorganized Debtors expect, for purposes of determining the fair market value of the Convertible Preferred Equity issued pursuant to the New Money Investment, to treat the commitment fees in respect of the New Money Commitment as reducing the price paid for such Convertible Preferred Equity (i.e., as reducing the issue price of such Convertible Preferred Equity). The Debtors currently expect to value such commitment fees by reference to such fees paid in the form of the Commitment Fee Convertible Preferred. In light of the foregoing, the Reorganized Debtors expect to take the position that, based on the fact that \$90 million of cash could result in the acquisition of Convertible Preferred Equity with a liquidation preference of \$105 million (i.e., the New Money Commitment Parties that received their commitment fee in the form of the Commitment Fee Convertible Preferred paid \$90 million in cash and in return received Convertible Preferred Equity with a liquidation preference of \$105 million (\$90 million of Purchased Convertible Preferred plus \$15 million of Commitment Fee Convertible Preferred)), the Convertible Preferred Equity has a cash purchase price value equal to approximately 85.71% of its stated liquidation preference (i.e., \$90 million divided by \$105 million).

Given the above facts and conclusions, part of the investment unit received by the Holders of First Lien Secured Claims is traded on an established market and part of the investment unit would have an issue price determined by a cash purchase price of the relevant component of such investment unit. The application of the investment unit rules is not free from doubt under circumstances such as these. Although not free from doubt, the Reorganized Debtors intend to take the position that (a) the issue price of the investment unit received by the Holders of First Lien Secured Claims will be determined by taking the sum of the issue price of the Exit Facility Term Loan and the cash purchase price value of the Convertible Preferred Equity; and (b) the issue price of the Exit Facility Term Loan will then be determined on a proportionate basis based on the amount of such issue price relative to such cash purchase price value. Although not free from doubt, the Reorganized Debtors intend to take the position that the payment of Cash to Holders of Allowed First Lien Secured Claims is in satisfaction of all accrued but untaxed interest on the debt instruments constituting the First Lien Secured Claims, and thus such Cash does not constitute part of the investment unit. Alternative positions to those described above may be possible, and Holders of First Lien Secured Claims should consult with their own tax advisors regarding the appropriate application of the investment unit rules to circumstances such as these.

Allocation of Basis Between Exit Facility Term Loan and Convertible Preferred Equity - Fair Market Value of Convertible Preferred Equity

The foregoing discussion regarding the application of the investment unit rules to the determination of the issue price of the Exit Facility Term Loan is not necessarily determinative with respect to the determination of the fair market value of the Convertible Preferred Equity for purposes of allocating basis based on the respective fair market value of the Convertible Preferred Equity, on one hand, and the Exit Facility Term Loan (with such fair market value determined based on its issue price in accordance with the above discussion), on the other hand. Holders should consult their own tax advisors regarding the appropriate allocation of the basis of the First Lien Secured Claims.

Second Lien Secured Claims

With respect to a Holder of an Allowed Second Lien Secured Claim, the basis of the Second Lien New Common Equity received should be the same as the Claim exchanged therefor (excluding any amounts attributable to accrued but untaxed interest on the applicable existing Claim).

Form 8937, Part II, Line 17

The tax treatment is based on the following Code sections and subsections:

Sections 305, 354(a), 356(a), 358(a)–(b), 361(a), 368(a)(1)(G), 368(a)(3)(B), 1273(b), 1273(c)(2)

Form 8937, Part II, Line 18

If the receipt of consideration under the Plan qualifies as an exchange of stock or securities pursuant to a tax-free reorganization for U.S. federal income tax purposes, no loss can be recognized.

If the receipt of consideration under the Plan does not qualify as a tax-free reorganization for U.S. federal income tax purposes, it may result in a loss to a holder in an amount generally equal to the excess (if any) of the holder's adjusted tax basis in its holdings over the fair market value of the consideration received under the Plan (in each case, excluding any amounts attributable to accrued but untaxed interest).

Form 8937, Part II, Line 19

The reportable tax year is 2021 with respect to calendar year taxpayers.