

Form **8937**
(December 2017)
Department of the Treasury
Internal Revenue Service

**Report of Organizational Actions
Affecting Basis of Securities**

OMB No. 1545-0123

▶ See separate instructions.

Part I Reporting Issuer

1 Issuer's name <u>Riverbed Holdings, Inc.</u>		2 Issuer's employer identification number (EIN) 47-2546675	
3 Name of contact for additional information <u>Kern Shin</u>	4 Telephone No. of contact <u>415-812-2328</u>	5 Email address of contact <u>kern.shin@riverbed.com</u>	
6 Number and street (or P.O. box if mail is not delivered to street address) of contact <u>680 Folsom Street</u>		7 City, town, or post office, state, and ZIP code of contact <u>San Francisco, CA 94107</u>	
8 Date of action <u>June 30, 2023</u>		9 Classification and description <u>See attachment.</u>	
10 CUSIP number <u>See attachment.</u>	11 Serial number(s) <u>See attachment.</u>	12 Ticker symbol <u>See attachment.</u>	13 Account number(s) <u>See attachment.</u>

Part II Organizational Action Attach additional statements if needed. See back of form for additional questions.

- 14** Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action ▶ See attachment.

- 15** Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis ▶ See attachment.

- 16** Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates ▶ See attachment.

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 applicable Internal Revenue Code sections.


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

Blank lines for providing information regarding 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 information necessary for the adjustment.

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 ▶ 15-Aug-2023
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 Holdings, Inc.
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. Noteholders 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.

Form 8937, Part I, Lines 9-13

Classification and Description (Line 9)	CUSIP Number (Line 10)	Serial Number (Line 11)	Ticker Symbol (Line 12)	Account Number (Line 13)
Credit Agreement, dated as of December 7, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Riverbed Intermediate Holdings, LLC, Riverbed, the Subsidiary Guarantors (as defined therein) party thereto from time to time, the lenders from time to time party thereto, Wilmington Trust, National Association, as administrative agent for the lenders thereto and as U.S. collateral agent for the Secured Parties (as defined therein), and Cortland Capital Market Services LLC, as Singapore collateral agent for the Secured Parties				
Credit Agreement, dated as of December 7, 2021 (as amended by the First Amendment to Credit Agreement, dated July 1, 2023, as may be further amended restated, amended and restated, supplemented or otherwise modified from time to time), by and among Riverbed Intermediate Holdings, LLC, Riverbed, the Subsidiary	76857HAB2	ISIN: US76857HAB24		

<p>Guarantors (as defined therein) party thereto from time to time, the lenders from time to time party thereto, Wilmington Trust, National Association, as administrative agent for the lenders thereto and as U.S. collateral agent for the Secured Parties (as defined therein), and Cortland Capital Market Services LLC, as Singapore collateral agent for the Secured Parties</p>				
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Form 8937, Part II, Line 14

On May 25, 2023, Vector Capitano Holdings (Cayman), L.P., a Cayman Islands exempted limited partnership (“**Parent**”), Vector Capitano Merger Sub, Inc., a Delaware corporation and a wholly-owned indirect subsidiary of Parent (“**Merger Sub**”), Riverbed Holdings, Inc. (the “**Company**”) and WT Representative LLC, solely in its capacity as the lenders’ representative, entered into an Agreement and Plan of Merger (with all other agreements, instruments, exhibits, schedules, certificates and other documents contemplated therein, each as may be amended from time to time, the “**Transaction Documents**”). At the time of entering into the Transaction Documents, the amount of existing obligations of Riverbed Technology, LLC, a Delaware limited liability company and wholly-owned indirect subsidiary of the Company (“**Riverbed**”) in respect of principal and accrued interest on loans issued pursuant to that certain Credit Agreement, dated as of December 7, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Riverbed Intermediate Holdings, LLC, Riverbed, the Subsidiary Guarantors (as defined therein) party thereto from time to time, the lenders from time to time party thereto, Wilmington Trust, National Association, as administrative agent for the lenders thereto and as U.S. collateral agent for the Secured Parties (as defined therein), and Cortland Capital Market Services LLC, as Singapore collateral agent for the Secured Parties (the “**Existing Credit Agreement**”) was approximately \$993,995,853 (the “**Existing Loans**”). Riverbed is disregarded as an entity separate from its owner, the Company, for U.S. federal income tax purposes. Pursuant to the Transaction Documents, on May 25, 2023, Parent made an equity commitment in the amount of \$80,200,000, which was used to provide a partial pay-down on the Existing Loans, and to satisfy other obligations of Parent under the Transaction Documents, including the payment of certain fees and expenses of the Company related to the transactions contemplated by the Transaction Documents.

Further, pursuant to the Transaction Documents, on June 30, 2023, lenders holding the Existing Loans (“**Holders**”) received shares of common stock of Vector Capitano Intermediate, Inc., a Delaware corporation and an indirect subsidiary of Parent (the “**VC Common Stock**”), which entitled such Lenders to future cash payments contingent on Parent achieving certain return thresholds, in satisfaction of \$1,500,000 of the principal amount of the Existing Loans, and \$14,266,732 in cash payments (subject to merger consideration adjustments) as a reduction of the outstanding principal of the Existing Loans. In addition, the Transaction Documents provided for, among other things, a reduction of the principal amount of the Existing Loans to \$375,000,000 (subject to adjustments as provided in the Transaction Documents) and an amendment to the Existing Credit Agreement (the modified loans, the “**Takeback Loans**”). After taking into account the foregoing, the remaining principal and accrued interest of the Existing Loans was extinguished and forgiven on June 30, 2023, i.e., prior to any change of control of the Company and, in any

event, the Company intends to recognize any related “cancellation of debt” income (if any) as of such time, irrespective of the “recapitalization” treatment to the Holders described below.

Form 8937, Part II, Lines 15 and 16

The basis of the Takeback Loans in the hands of the Holders will depend, in part, on whether, for U.S. federal income tax purposes, the Existing Loans and the Takeback Loans constitute “securities” of the Company.

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.

The Company intends to treat the amendment of the Existing Credit Agreement as a significant modification of the Existing Loans for U.S. federal income tax purposes. While the position is not free from doubt, the Company intends to take the position that the Existing Loans and the Takeback Loans are securities of the Company for U.S. federal income tax purposes. Accordingly, the Company intends to take the position that the Holders are treated as exchanging securities in the Company (i.e., their Existing Loans) for securities (i.e., Takeback Loans) of a corporation that is a party to such reorganization (i.e., the Company), and the exchange of Existing Loans for Takeback Loans (“**the Debt Exchange**”) qualifies as a recapitalization for U.S. federal income tax purposes. Unless otherwise specified, the remainder of this discussion assumes that these intended tax treatments apply.

To the extent the Debt Exchange qualifies as a recapitalization, a Holder of an Existing Loan would recognize gain, but not loss, to the extent of the lesser of (a) the excess of the amount realized by the Holder in the Debt Exchange over such Holder’s adjusted tax basis in its Existing Loan and (b) the amount of “boot” received in the Debt Exchange. The amount realized by a Holder in the Debt Exchange generally is equal to the sum of (1) the fair market value of the VC Common Stock received (excluding the amount treated as received in satisfaction of accrued interest), (2) the amount of cash received (excluding the amount treated as received in satisfaction of accrued interest), and (3) the issue price of the Takeback Loans received. The amount of “boot” received by a Holder in the Debt Exchange generally is equal to the sum of (i) the amount of cash received and (ii) the fair market value of the VC Common Stock received, in each case, excluding any amounts treated as received in satisfaction of accrued interest.

The Company has determined that the issue price of the Takeback Loans will be 26.75% of face, or \$267.50 per face amount of \$1,000. The Company’s determination of the issue price is binding on holders thereof unless the holder explicitly discloses that its determination is different from the Company’s determination. An average of quotes (as opposed to trading prices) from certain investment banks for the Takeback Loan is provided below for informational purposes only.

	7/03/2023	7/04/2023	7/05/2023	7/06/2023	7/07/2023	7/08/2023	7/09/2023
Takeback Loan	26.750	N/A (holiday)	27.500	26.750	26.750	N/A (weekend)	N/A (weekend)

	7/10/2023	7/11/2023	7/12/2023	7/13/2023	7/14/2023
Takeback Loan	26.750	26.750	26.750	26.750	26.750

To the extent the Debt Exchange qualifies as a recapitalization, the basis of the Takeback Loan received by a Holder should be the same as the Holder's basis in its Existing Loan exchanged therefor, decreased by the amount of boot received, and increased by the amount of gain, if any, recognized by such Holder in the Debt Exchange.

A Holder that acquired Existing Loans at different times or at different prices should consult its own tax advisor regarding the tax consequences to them of the Debt Exchange.

Each Holder should also consult its own tax advisor about the possibility that the Debt Exchange does not qualify as a recapitalization and is instead treated as a taxable disposition of the Existing Loans in exchange for cash, VC Common Stock and the Takeback Loans.

Form 8937, Part II, Line 17

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

Sections 354, 356, 358, 368(a)(1)(E), 446, 1001, 1012, 1273 and 1275 of the Code

Form 8937, Part II, Line 18

If the Debt Exchange qualifies as a recapitalization for U.S. federal income tax purposes, no loss can be recognized by a Holder except to the extent the Holder has accrued interest on the Existing Loans into income but such interest is not paid to the Holder in the Debt Exchange.

If the Debt Exchange of Existing Loans for Takeback Loans does not qualify as a recapitalization for U.S. federal income tax purposes, a Holder may be eligible to recognize a loss to the extent the Holder's adjusted tax basis in its Existing Loans exceeds the sum of (x) the issue price of the Takeback Loans (determined as noted above), (y) the fair market value of the VC Common Stock and (z) the amount of cash received (in each case of (x), (y) and (z), excluding any amounts attributable to accrued interest).

Form 8937, Part II, Line 19

The reportable tax year is 2023 with respect to calendar year taxpayers.