

Riverbed Technology, Inc. (RVBD)

Record date for voting rights: [tbd]
Shareholder vote: [tbd]
Proposed buyer: Thoma Bravo (with participants)
Value of transaction: \$3.6 billion
Incorporation: Delaware

In another “forced sale” pressed by an activist, Riverbed Technology reported on December 15, 2014 that it had agreed to be acquired by the private equity firm Thoma Bravo (with participation of the Ontario Teachers’ Pension Plan) at a price of \$21.00 per share.¹ It should be noted that this price simply matches a February 2014 offer by the activist, Elliott Management, which the company’s board had determined at the time “continued to undervalue Riverbed relative to its value as an independent company,” and that the alternative agreement is with private equity investors that have stated their intent to continue support of existing managers and their strategies.² Public shareholders are therefore presented with a choice between management’s auction price of the stock and an appraisal of the long term enterprise value that management and Thoma Bravo are buying.

The situation appears to satisfy the three screening criteria for the Forum’s “[Appraised Value Rights \(“AVR”\) Management](#)” support of shareholders considering this alternative:

1. **Buyer** – The proposed transaction is a “standalone” buyout, without any benefits of a business combination that might justify a buyer’s offering more than the intrinsic value of the company. It is therefore unlikely that the buyer, as an experienced professional investor with access to insider information, will be able to explain to the court – and also to its equity partners and lenders – that the price it offered to pay was more than its view of the company’s intrinsic value. There is little risk that a court appraisal would vary from past patterns for such standalone buyouts.³
2. **Amount** – The size of the buyout is in a range that could justify public registration for quoted AVR trading and “Level 1” pricing if holders of a significant portion of the company’s stock demand appraisal and request support of liquidity. If interest in liquidity does not justify public registration, it is in any event likely that the size of this transaction will result in a sufficient volume of appraisal demands to support market activity with “Level 2” pricing of AVR investments.
3. **Jurisdiction** – The company is incorporated in Delaware, the state that provides a well-defined and relatively predictable process for appraisal rights.

The company can be expected to file its definitive proxy statement setting a record date any time after late January for a shareholder vote in February or early March. The Forum will therefore welcome requests of record date shareholders for reservations of Riverbed AVR Management.

GL – January 14, 2015 (update of preliminary December 16, 2014 review)

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¹ See [December 15, 2014 Bloomberg: "Riverbed Technology Agrees to Be Acquired for \\$3.6 Billion"](#).

² See “Background of the Merger” (pages 34-42; PDF pages 43-51) in [January 7, 2015, Riverbed Technology, Inc., SEC Form PREM14A Preliminary Proxy Statement](#).

³ See [September 10, 2013 Forum Report: Court Rules for Appraisal: Fair Value = Intrinsic Value](#).