

Report of Organizational Actions Affecting Basis of Securities

OMB No. 1545-0123

► See separate instructions.

Part I Reporting Issuer

1 Issuer's name <u>RSH Utex Holdings LLC & Subsidiaries</u>		2 Issuer's employer identification number (EIN) <u>82-3474048</u>	
3 Name of contact for additional information <u>Pete T. Sanchez</u>	4 Telephone No. of contact <u>(800) 359-9229</u>	5 Email address of contact <u>psanchez@utexind.com</u>	
6 Number and street (or P.O. box if mail is not delivered to street address) of contact <u>10810 Katy Freeway, Suite 100</u>		7 City, town, or post office, state, and ZIP code of contact <u>Houston, TX 77043</u>	
8 Date of action <u>December 3, 2020</u>		9 Classification and description <u>SEE ATTACHED</u>	
10 CUSIP number <u>SEE ATTACHED</u>	11 Serial number(s) <u>SEE ATTACHED</u>	12 Ticker symbol <u>UTEX</u>	13 Account number(s) <u>SEE ATTACHED</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 ATTACHED STATEMENT

- 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 ATTACHED STATEMENT

- 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 ATTACHED STATEMENT

Part II Organizational Action (continued)

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ► For Holders of Debt: IRC Sections 354, 356, 358, 368, 1001, 1012, and 1223

For Holders of Old Utex Common Stock: IRC Sections 354, 358, 368

18 Can any resulting loss be recognized? ► SEE ATTACHED STATEMENT

19 Provide any other information necessary to implement the adjustment, such as the reportable tax year ► THE ADJUSTMENTS TO BASIS WOULD BE TAKEN INTO ACCOUNT IN THE TAX YEAR OF THE HOLDER DURING WHICH THE EFFECTIVE DATE OCCURRED (i.e., December 3, 2020)

Sign Here

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.

Signature ►

Pete T. Sanchez

Date ►

01/15/2021

Print your name ►

Pete T. Sanchez

Title ►

CFO

Paid Preparer Use Only

Print/Type preparer's name

Robert Bruce Gabriel

Preparer's signature

Robert B. Gabriel

Date

1-15-2021

Check ☐ if self-employed

PTIN

P00649131

Firm's name ►

Deloitte Tax LLP

Firm's EIN ►

86-1065772

Firm's address ►

1111 Bagby, Suite 4500 Houston, TX 77002

Phone no.

(713) 982-2000

Send Form 8937 (including accompanying statements) to: Department of the Treasury, Internal Revenue Service, Ogden, UT 84201-0054

RSH Utex Holdings, LLC

FEIN: 82-3474048

Attachment to Form 8937

Report of Organizational Actions Affecting Basis of Securities

Disclaimer: 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 transaction described herein and the impact to tax basis resulting from the transaction.

RSH Utex Holdings, LLC
FEIN: 82-3474048
Attachment to Form 8937
Report of Organizational Actions Affecting Basis of Securities

Form 8937, Part I, Lines 9 and 10

<u>Debt Instrument Exchanged</u>	<u>CUSIP</u>
First Lien Term Loans due 2021	91759UAM7
Second Lien Term Loans due 2022	91759UAP0
Debtor-in-possession ("DIP") Term Loan due 2021	91759UAR6

Form 8937, Part II, Line 14

On October 8, 2020 (the "Petition Date"), RSH Utex Holdings, LLC ("Utex Parent"), Utex Industries, Inc. ("Utex Industries"), and certain of Utex Parent's subsidiaries (collectively, "Utex" or the "Debtors") filed the *Joint Prepackaged Chapter 11 Plan of Utex Industries, Inc. and Its Affiliated Debtors*, dated October 8, 2020 (the "Plan") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). On October 21, 2020 (the "Confirmation Date"), the Bankruptcy Court entered an order approving and confirming the Plan. On December 3, 2020 (the "Effective Date"), Utex satisfied the conditions of the Plan and the Plan became effective.¹

On the Effective Date, in a series of transactions pursuant to the Plan, the Debtors distributed new common stock of Utex Parent (the "New Utex Stock") and cash to holders of certain claims (the "Allowed Claims") as described below, in exchange for such holders' cancellation and forgiveness of such claims. Concurrently, all of the old common stock of Utex Parent (the "Old Utex Stock") was cancelled and extinguished and the holders of the Old Utex Stock received no consideration with respect to this extinguishment. The events that occurred on the Effective Date pursuant to the Plan are cumulatively referred to herein as the "Transaction." The following describes the exchange of consideration between Utex and the following holders of Allowed Claims of Utex in the Transaction:

- Holders of approximately 81.6% of the First Lien Credit Agreement Claims;
- Holders of approximately 90.4% of the Second Lien Credit Agreement Claims; and,

¹ All capitalized terms not otherwise defined in this disclosure have the same meaning as those defined terms in the Plan.

- Holders of the Old Utex Stock Interests (*i.e.*, Existing Equity Interests).

Treatment of Holders of First Lien Term Loan Claims

Pursuant to the Plan, the First Lien Credit Agreement Claims included claims by holders of the 5.60% First Lien Notes due 2021 and were allowed in the amount of \$487,234,394.

On the Effective Date, each holder of an allowed First Lien Credit Agreement Claim was entitled to receive, in full and final satisfaction of such claims, the holder's Pro Rata share of: (i) 96% of the New Utex Stock (the "New Equity Interests") issued pursuant to the Prepackaged Plan on the Effective Date, subject to dilution by the New Equity Interests issued pursuant to the Management Incentive Plan and the New Warrants and (ii) the Exit Term Loan Second Out Loans.

Treatment of Holders of Second Lien Term Loan Claims

Pursuant to the Plan, the Second Lien Credit Agreement Claims included claims by holders of the 8.85% Second Lien Notes due 2022 and were allowed in the amount of \$200,000,000.

On the Effective Date, each holder of an allowed Second Lien Credit Agreement Claim was entitled to receive, in full and final satisfaction of such claims, the holder's Pro Rata share of: (i) the New Equity Interests representing, in the aggregate, 4% of the New Equity Interests issued pursuant to the Prepackaged Plan on the Effective Date, subject to dilution from New Equity Interests issued pursuant to the Management Incentive Plan and the New Warrants and (ii) the New Warrants.

Treatment of Existing Equity Interests

On the Effective Date, the Existing Equity Interests were cancelled, released, and extinguished.

Form 8937, Part II, Line 15

Effect on Basis to U.S. Holders

As a result of the Transaction, each holder of a First Lien Credit Agreement Claim, Second Lien Credit Agreement Claim, or Existing Equity Interests (together or separately, a "Claim") exchanged its Claim for the right to receive consideration discussed on Line 14 of this Form 8937.

For purposes of this Form, a “U.S. Holder” means a beneficial owner of an First Lien Credit Agreement Claim, Second Lien Credit Agreement Claim, or Existing Equity Interests, that is: (a) an individual citizen or resident of the United States for U.S. federal income tax purposes; (b) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia; (c) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (d) a trust (i) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (ii) that has a valid election in effect under applicable Treasury regulations to be treated as a United States person.

If a partnership or other entity or arrangement taxable as a partnership for U.S. federal income tax purposes holds such Claims, the tax treatment of a partner in such partnership generally will depend upon the status of the partner and the activities of the partnership. If you are a partner in such a partnership holding any such Claims, you should consult your own tax advisor.

A “Non-U.S. Holder” means a beneficial owner of such Claims that is neither a U.S. Holder nor a partnership or other entity or arrangement taxable as a partnership for U.S. federal income tax purposes.

The following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon your individual circumstances. All holders of Claims and Interests are urged to consult their tax advisor for the U.S. federal, state, local and other tax consequences applicable under the Plan. For more information regarding the Transaction, please visit Utex’s website for links to Utex’s Plan of Reorganization and Disclosure Statement filed with the Bankruptcy Court, available at <https://cases.omniagentsolutions.com/?clientId=CsgAAncz%252b6YaruJ%252fcTFc1VI%252f22FPWFGNP6w7gGKAcgOilCshxlu6qBCXEvdSuZYFcg%252bYKNnqwwY%253d>.

Effect on Basis to U.S. Holders of Claims that Constitute Stock or Securities

This summary discusses the U.S. federal income tax consequences to (i) holders of First Lien Credit Agreement Claims and Second Lien Credit Agreement Claims who are U.S. Holders and (ii) holders of Allowed Claims receiving New Equity Interests who are Non-U.S. Holders.

1. Treatment of U.S. Holders of First Lien Credit Agreement Claims

Pursuant to the Plan, in complete and final satisfaction of their respective Claims, the holders of the Allowed First Lien Credit Agreement Claims received their Pro Rata share of the New Equity Interests and the Exit Term Loan Second Out Loans.

The U.S. federal income tax consequences of the Plan to a U.S. Holder of Allowed First Lien Credit Agreement Claims depends, in part, on whether such holder's Allowed First Lien Credit Agreement Claims, as applicable, and the Exit Term Loan Second Out Loans received in exchange therefor, constitute "securities" for U.S. federal income tax purposes.

The term "security" is not defined in the Tax Code or in the Treasury Regulations issued thereunder and has not been clearly defined by judicial decisions. The determination of whether a particular debt obligation constitutes a "security" depends on an overall evaluation of the nature of the debt, including whether the holder of such debt obligation is subject to a material level of entrepreneurial risk and whether a continuing proprietary interest is intended or not. One of the most significant factors considered in determining whether a particular debt obligation is a security is its original term. In general, debt obligations issued with a weighted average maturity at issuance of less than 5 years do not constitute securities, whereas debt obligations with a weighted average maturity at issuance of 10 years or more constitute securities. Additionally, the IRS has ruled that new debt obligations with a term of less than 5 years issued in exchange for and bearing the same terms (other than interest rate) as securities should also be classified as securities for this purpose, since the new debt represents a continuation of the holder's investment in the corporation in substantially the same form. The First Lien Loans had a 1 to 7 year maturity at issuance. The Exit Term Loan Second Out Loans are expected to have a 5 year maturity. U.S. Holders of First Lien Credit Agreement Claims are urged to consult their own tax

advisors regarding the appropriate status for U.S. federal income tax purposes of the First Lien Credit Agreement Claims and of the Exit Term Loan Second Out Loans.

(a) Recapitalization Treatment

If (and to the extent) a U.S. Holder's First Lien Credit Agreement Claim (in whole or in part) constitutes a "security" of Utex for U.S. federal income tax purposes and the Exit Term Loan Second Out Loans received also constitutes a "security" of Utex for U.S. federal income tax purposes, such holder's exchange should qualify for "recapitalization" treatment. In such event, a U.S. Holder of an Allowed First Lien Credit Agreement Claim generally will not recognize loss, but will recognize gain (computed as described below in the case of a taxable exchange) to the extent of the fair market value of the New Equity Interests. In addition, any consideration received in respect of any Claim for accrued but unpaid interest is treated separately.

In a recapitalization exchange, the U.S. Holder's aggregate tax basis in the Exit Term Loan Second Out Loans received will equal such U.S. Holder's aggregate adjusted tax basis in the First Lien Credit Agreement Claims exchanged therefor, increased by any gain and interest income recognized in the exchange, and decreased by (i) the fair market value of the New Equity Interests received and (ii) any deductions claimed in respect of any previously accrued but unpaid interest. A U.S. Holder's holding period in the Exit Term Loan Second Out Loans will include its holding period in the First Lien Credit Agreement Claims exchanged therefor, except to the extent of any consideration received in respect of accrued but unpaid interest.

(b) Taxable Exchange

If (and to the extent) a U.S. Holder's First Lien Credit Agreement Claim (in whole or in part) does not constitute a "security" of Utex for U.S. federal income tax purposes, or the Exit Term Loan Second Out Loan received does not constitute a "security" of Utex for U.S. federal income tax purposes, the receipt of the New Equity Interests and the Exit Term Loan Second Out Loans will be a taxable transaction. In such cases, a U.S. Holder of an Allowed First Lien Credit Agreement Claim, as the case may be, should generally recognize gain or loss in an amount equal to the difference, if any, between (i) the sum of the fair market value of New Equity Interests received plus the issue price (as defined below) of the Exit Term Loan Second Out Loans received (other than any consideration received in respect of a Claim for accrued but unpaid interest, and (ii) the U.S. Holder's adjusted tax basis in its Claims (other than any tax basis attributable to accrued but unpaid interest). In addition, a U.S. Holder of a Claim will have

interest income to the extent of any exchange consideration allocable to accrued but unpaid interest not previously included in income.

In a taxable exchange, a U.S. Holder's aggregate tax basis in any New Equity Interests and Exit Term Loan Second Out Loans received in respect of its Allowed First Lien Credit Agreement Claims on the Effective Date will equal the amount taken into account in determining gain or loss. In addition, the holding period in the New Equity Interests and the Exit Term Loan Second Out Loans received generally will begin on the day following the Effective Date.

2. Treatment of U.S. Holders of Second Lien Credit Agreement Claims

Pursuant to the Plan, in complete and final satisfaction of their respective Claims, holders of Second Lien Credit Agreement Claims received New Equity Interests and New Warrants.

In general, a U.S. Holder of any such claim should recognize gain or loss in an amount equal to the difference, if any, between (i) the fair market value of the New Equity Interests and New Warrants received in respect of its Claim (other than any exchange consideration received in respect of a Claim for accrued but unpaid interest), and (ii) the U.S. Holder's adjusted tax basis in the Claims exchanged (other than any tax basis attributable to accrued but unpaid interest, see . In addition, a U.S. Holder of an Allowed Second Lien Credit Agreement Claim will have interest income to the extent of any exchange consideration allocable to accrued but unpaid interest not previously included in income.

The U.S. Holder's tax basis in the New Equity Interests and New Warrants received in respect of its Allowed Second Lien Credit Agreement Claim on the Effective Date will equal their respective fair market values. In addition, the holding period in the New Equity Interests and New Warrants generally will begin on the day following the Effective Date.

3. Distributions in Discharge of Accrued Interest

In general, to the extent that any exchange consideration received pursuant to the Prepackaged Plan by a U.S. Holder of a Claim is received in satisfaction of interest accrued during its holding period, such amount will be taxable to the holder as interest income (if not previously included in the holder's gross income). Conversely, a U.S. Holder may be entitled to recognize a deductible

loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

The Prepackaged Plan provides that distributions with respect to Allowed Claims shall be allocated first to the principal portion of such Allowed Claim (as determined for United States federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any. There is no assurance that the IRS will respect such allocation for U.S. federal income tax purposes. You are urged to consult your own tax advisor regarding the allocation of consideration received under the Prepackaged Plan, as well as the deductibility of accrued but unpaid interest and the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income for U.S. federal income tax purposes.

Form 8937, Part II, Line 16

To the extent that a Claim constituted a security for U.S. federal income tax purposes and the exchange for consideration in the Transaction constituted a reorganization pursuant to IRC Section 368(a), a U.S. Holder's aggregate tax basis in the New Utex Stock received in respect of its Claims will generally equal such U.S. Holder's aggregate tax basis in its respective Claim surrendered in the Transaction, increased by any gain recognized and decreased by any boot received (*e.g.*, cash and the fair market value of other property).

The tax basis of the boot received by U.S. Holders (*e.g.*, cash and the fair market value of other property) would equal the fair market value of the boot received.

To the extent a Claim did not constitute a security, the tax basis of any consideration received by a U.S. Holder of such Claim under the Plan would equal its fair market value.

Form 8937, Part II Line 18

To the extent the exchanges in the Transaction are treated as recapitalizations for U.S. federal income tax purposes, generally no loss may be recognized with respect to Senior Note Claims and Existing Equity Interests.

To the extent the exchanges are taxable, loss is recognizable in an amount generally equal to the excess of the holder's adjusted tax basis in the Claim relinquished over the aggregate fair market value of the New Utex Stock received in respect of such Claim.