

FINISAR CORP  
Form S-3ASR  
June 05, 2006

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As filed with the Securities and Exchange Commission on June 5, 2006

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**Form S-3**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933  
FINISAR CORPORATION**  
*(Exact name of Registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**94-3038428**  
*(I.R.S. Employer  
Identification No.)*

**1389 Moffett Park Drive  
Sunnyvale, California 94089  
(408) 548-1000**

*(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)*

**JERRY S. RAWLS  
Chief Executive Officer  
FINISAR CORPORATION  
1389 Moffett Park Drive  
Sunnyvale, California 94089  
(408) 548-1000**

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*  
**Copies to:**

**STEPHEN K. WORKMAN  
Senior Vice President, Finance,  
Chief Financial Officer and Secretary  
Finisar Corporation  
1389 Moffett Park Drive**

**DENNIS C. SULLIVAN, ESQ.  
DLA Piper Rudnick Gray Cary US LLP  
2000 University Avenue  
East Palo Alto, CA 94303-2248  
(650) 833-2000**

**Sunnyvale, California 94089  
(408) 548-1000**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(c) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

#### CALCULATION OF REGISTRATION FEE

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price per Share(1)</b>	<b>Proposed Maximum Aggregate Offering Price(1)</b>	<b>Amount of Registration Fee(2)</b>
Common Stock, \$0.001 par value	24,145,055 shares	\$4.53	\$109,377,099	\$11,704

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(g) of the Securities Act of 1933, and based on the average of the high and low sales prices of the common stock, as reported on the Nasdaq National Market on May 30, 2006.
- (2) In accordance with Rule 457(p) under the Securities Act, \$4,518 of the filing fee previously paid for the registration of shares of common stock under registration statement number 333-122705, filed on February 10, 2005, which have not been sold and are being registered under this registration statement, is being offset against the registration fee for this registration statement.



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**24,145,055 Shares**

**Finisar Corporation**

**Common Stock**

This prospectus relates to the public offering, which is not being underwritten, of shares of common stock of Finisar Corporation. The shares of our common stock may be offered by any of the selling stockholders named in this prospectus. The selling stockholders named in this prospectus acquired the shares of common stock, and the right to cause the shares to be registered, from Infineon Technologies AG, which received the shares as consideration for our acquisition of certain assets associated with the design, development and manufacture of the optical transceiver and transponder products of the fiber optics business unit of Infineon. We will receive no part of the proceeds of the sale of the shares offered in this prospectus. All expenses of registration incurred in connection with this offering are being borne by us, but all selling and other expenses incurred by the selling stockholders will be borne by the selling stockholders. None of the shares offered pursuant to this prospectus have been registered prior to the filing of the registration statement of which this prospectus is a part.

The common stock offered in this prospectus may be offered and sold by the selling stockholders directly or through broker-dealers acting solely as agents. In addition, the broker-dealers may acquire the common stock as principals. The distribution of the common stock may be effected in one or more of the following types of transactions:

transactions on any national securities exchange or quotation service on which the common stock may be listed or quoted at the time of the sale, including the Nasdaq National Market;

transactions in the over-the-counter market; or

transactions otherwise than on such exchanges or services or in the over-the-counter market.

Our common stock is traded on the Nasdaq National Market under the symbol FNSR . On June 2, 2006, the last reported sales price for the common stock was \$4.90 per share.

**INVESTING IN THE COMMON STOCK OFFERED IN THIS PROSPECTUS INVOLVES A HIGH DEGREE OF RISK. SEE RISK FACTORS BEGINNING ON PAGE 2.**

The selling stockholders and any brokers executing selling orders on behalf of the selling stockholders may be deemed to be underwriters within the meaning of the Securities Act of 1933. Commissions received by a broker executing selling orders may be deemed to be underwriting commissions under the Securities Act.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is June 5, 2006.

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You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. The selling stockholders are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

Finisar is a registered trademark of Finisar Corporation. This prospectus contains product names, trade names and trademarks of Finisar and other organizations.

The terms Finisar, we, us, our, and the company, as used in this prospectus, refer to Finisar Corporation and its consolidated subsidiaries.

**DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

Some of the statements in this prospectus and in the documents incorporated by reference constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We use words like anticipates, believes, plans, expects, future, intends and similar expressions to identify these forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events; however, our business and operations are subject to a variety of risks and uncertainties, including those listed under Risk Factors and elsewhere in this prospectus, and, consequently, actual results may materially differ from those projected by any forward-looking statements. You should not place undue reliance on these forward-looking statements. Factors that could cause actual results to differ from those projected include, but are not limited to, the following:

- uncertainty regarding our future operating results and our ability to achieve and maintain profitability and positive cash flow;

- uncertainty regarding the commercial acceptance of high-speed networking and storage technologies;

- our ability to introduce new products;

delays or losses of sales due to long sales and implementation cycles for our products;

the possibility of lower prices, reduced gross margins and loss of market share due to increased competition; and

increased demands on our resources due to cost reduction measures and the integration of several companies that we have acquired.

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**SUMMARY**

*This summary highlights selected information contained elsewhere in this prospectus. You should read the entire prospectus and the documents incorporated by reference in this prospectus carefully before making an investment decision.*

**Finisar Corporation**

We are a leading provider of optical subsystems, components and network performance test and monitoring systems. These products enable high-speed data communications for networking and storage applications over local area networks, or LANs, storage area networks, or SANs, and metropolitan access networks, or MANs. Optical subsystems consist primarily of transceivers sold to manufacturers of storage and networking equipment for SAN, LAN and MAN applications. Optical subsystems also include multiplexers, demultiplexers and optical add/drop modules used in MAN applications. We are focused on the application of digital fiber optics to provide a broad line of high-performance, reliable, value-added optical subsystems for data networking and storage equipment manufacturers. Our line of optical subsystems supports a wide range of network protocols, transmission speeds, distances, physical mediums and configurations. Our line of optical components consists primarily of packaged lasers and photodetectors used in transceivers, primarily for LAN and SAN applications. We also provide network performance test and monitoring systems to original equipment manufacturers for testing and validating equipment designs and to operators of networking and storage data centers for testing, monitoring and troubleshooting the performance of their installed systems. We sell our products primarily to leading storage and networking equipment manufacturers such as Brocade, Cisco Systems, EMC, Emulex, Hewlett-Packard Company and Qlogic.

We were incorporated in California in April 1987 and reincorporated in Delaware in November 1999. Our principal executive offices are located at 1389 Moffett Park Drive, Sunnyvale, California 94089, our telephone number is (408) 548-1000 and our website is located at [www.finisar.com](http://www.finisar.com). Information on our website is not a part of this prospectus.

**The Offering**

On January 31, 2005, we acquired certain assets associated with the design, development and manufacture of the optical transceiver and transponder products of the fiber optics business unit of Infineon Technologies AG ( Infineon ) in exchange for 34 million shares of our common stock. In connection with the acquisition of such assets from Infineon, we entered into a registration rights agreement with Infineon under which we agreed to file a shelf registration statement on Form S-3 covering the resale of the shares issued to Infineon. In April 2005, Infineon sold the 34 million shares, and assigned its rights under the registration rights agreement, in a private transaction to certain funds managed by VantagePoint Venture Partners (collectively, VantagePoint), who, together with the persons and entities to whom VantagePoint has distributed certain shares, are named as the selling stockholders herein.

Common stock offered by selling stockholders	24,145,055 shares
Common stock outstanding	305,512,111 shares outstanding as of April 30, 2006(1)
Use of proceeds	We will not receive any of the proceeds from the sale of shares by the selling stockholders.
Nasdaq National Market symbol	FNSR

- (1) The number of shares that will be outstanding after the offering is based on the number of shares outstanding as of April 30, 2006, and excludes (i) shares of common stock reserved for issuance under our stock option plans and employee stock purchase plan and upon exercise of stock options and warrants assumed in connection with our acquisitions of six privately-held companies, and (ii) the shares of common stock issuable upon conversion of our 5 1/4% convertible subordinated notes due 2008 and 2 1/2% convertible subordinated notes due 2010.

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**RISK FACTORS**

*An investment in the securities offered by this prospectus involves a high degree of risk. You should carefully consider the following factors and other information in this prospectus and in the documents incorporated by reference in this prospectus before deciding to purchase shares of our common stock. If any of these risks occur, our business could be harmed, the trading price of our stock could decline and you may lose all or part of your investment.*

***We have incurred significant net losses, our future revenues are inherently unpredictable, our operating results are likely to fluctuate from period to period, and if we fail to meet the expectations of securities analysts or investors, our stock price could decline significantly***

We incurred net losses of \$114.1 million, \$113.8 million and \$619.8 million in our fiscal years ended April 30, 2005, 2004 and 2003, respectively, and a net loss of \$26.6 million in the nine months ended January 31, 2006. Although we recorded net income of \$8.3 million in the three months ended January 31, 2006, our operating results for future periods are subject to numerous uncertainties, and we cannot assure you that we will be able to sustain profitability.

Our quarterly and annual operating results have fluctuated substantially in the past and are likely to fluctuate significantly in the future due to a variety of factors, some of which are outside of our control. Accordingly, we believe that period-to-period comparisons of our results of operations are not meaningful and should not be relied upon as indications of future performance. Some of the factors that could cause our quarterly or annual operating results to fluctuate include market acceptance of our products, market demand for the products manufactured by our customers, the introduction of new products and manufacturing processes, manufacturing yields, competitive pressures and customer retention.

We may experience a delay in generating or recognizing revenues for a number of reasons. Orders at the beginning of each quarter typically represent a small percentage of expected revenues for that quarter and are generally cancelable at any time. Accordingly, we depend on obtaining orders during each quarter for shipment in that quarter to achieve our revenue objectives. Failure to ship these products by the end of a quarter may adversely affect our operating results. Furthermore, our customer agreements typically provide that the customer may delay scheduled delivery dates and cancel orders within specified timeframes without significant penalty. Because we base our operating expenses on anticipated revenue trends and a high percentage of our expenses are fixed in the short term, any delay in generating or recognizing forecasted revenues could significantly harm our business. It is likely that in some future quarters our operating results will again decrease from the previous quarter or fall below the expectations of securities analysts and investors. In this event, it is likely that the trading price of our common stock would significantly decline.

***We may have insufficient cash flow to meet our debt service obligations, including payments due on our subordinated convertible notes***

We will be required to generate cash sufficient to conduct our business operations and pay our indebtedness and other liabilities, including all amounts due on our outstanding 21/2% and 51/4% convertible subordinated notes due 2010 and 2008, respectively. The aggregate outstanding principal amount of these notes was \$250.3 million at January 31, 2006. Holders of the notes due in 2010 have the right to require us to repurchase some or all of their notes on October 15, 2007. We may choose to pay the repurchase price in cash, shares of our common stock or a combination thereof. We may not be able to cover our anticipated debt service obligations from our cash flow. This may materially hinder our ability to make payments on the notes. Our ability to meet our future debt service obligations will depend upon our future performance, which will be subject to financial, business and other factors affecting our operations, many of which are beyond our control. Accordingly, we cannot assure you that we will be able to make required principal and interest

payments on the notes when due.

***We may not be able to obtain additional capital in the future, and failure to do so may harm our business***

We believe that our existing balances of cash, cash equivalents and short-term investments will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 12 months. We may, however,

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require additional financing to fund our operations in the future or to repay the principal of our outstanding 21/2% and 51/4% convertible subordinated notes due 2010 and 2008, respectively. Due to the unpredictable nature of the capital markets, particularly in the technology sector, we cannot assure you that we will be able to raise additional capital if and when it is required, especially if we experience disappointing operating results. If adequate capital is not available to us as required, or is not available on favorable terms, we could be required to significantly reduce or restructure our business operations.

***Failure to accurately forecast our revenues could result in additional charges for obsolete or excess inventories or non-cancelable purchase commitments***

We base many of our operating decisions, and enter into purchase commitments, on the basis of anticipated revenue trends which are highly unpredictable. Some of our purchase commitments are not cancelable, and in some cases we are required to recognize a charge representing the amount of material or capital equipment purchased or ordered which exceeds our actual requirements. In the past, we have sometimes experienced significant growth followed by a significant decrease in customer demand such as occurred in fiscal 2001, when revenues increased by 181% followed by a decrease of 22% in fiscal 2002. Based on projected revenue trends during these periods, we acquired inventories and entered into purchase commitments in order to meet anticipated increases in demand for our products which did not materialize. As a result, we recorded significant charges for obsolete and excess inventories and non-cancelable purchase commitments which contributed to substantial operating losses in fiscal 2002. Should revenue in future periods again fall substantially below our expectations, or should we fail again to accurately forecast changes in demand mix, we could be required to record additional charges for obsolete or excess inventories or non-cancelable purchase commitments.

***If we encounter yield problems or other delays in the production or delivery of our internally-manufactured components, we may lose sales and damage our customer relationships***

In order to reduce our manufacturing costs, we have acquired a number of companies, and business units of other companies, that manufacture optical components incorporated in our optical subsystem products. For example, we now manufacture most of the lasers used in our optical subsystems at wafer fabrication facilities located in Allen, Texas and Fremont, California. As a result of this increased vertical integration, we have become increasingly dependent on our internally-produced components. The manufacture of these components, including the fabrication of wafers, involves highly complex processes. Minute levels of contaminants in the manufacturing environment, difficulties in the fabrication process or other factors can cause a substantial portion of the components on a wafer to be nonfunctional. These problems may be difficult to detect at an early stage of the manufacturing process and often are time-consuming and expensive to correct. We have recently experienced problems achieving acceptable yields at our wafer fabrication facilities, resulting in delays in the delivery of components to our subsystem assembly facilities. Poor manufacturing yields over a prolonged period of time could adversely affect our ability to deliver our subsystem products to our customers and could also affect our sale of components to customers in the merchant market. Such delays could harm our relationships with customers and have an adverse effect on our business.

***Past and future acquisitions could be difficult to integrate, disrupt our business, dilute stockholder value and harm our operating results***

Since October 2000, we have completed the acquisition of eight privately-held companies, including our acquisitions of I-TECH CORP. in April 2005 and InterSAN, Inc. in May 2005, and certain businesses and assets from six other companies, including our acquisition of certain assets related to the transceiver and transponder business of Infineon Technologies AG in January 2005. We continue to review opportunities to acquire other businesses, product lines or technologies that would complement our current products, expand the breadth of our markets or enhance our technical capabilities, or that may otherwise offer growth opportunities, and we from time to time make proposals and offers, and take other steps, to acquire businesses, products and technologies. Several of our past acquisitions have been material, and acquisitions

that we may complete in the future may be material. In 10 of our 14 acquisitions, we issued stock as all or a portion of the consideration. The issuance of stock in these and any future transactions has or would dilute stockholders' percentage ownership.

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Other risks associated with acquiring the operations of other companies include:

- problems assimilating the purchased operations, technologies or products;
- unanticipated costs associated with the acquisition;
- diversion of management's attention from our core business;
- adverse effects on existing business relationships with suppliers and customers;
- risks associated with entering markets in which we have no or limited prior experience; and
- potential loss of key employees of purchased organizations.

Several of our past acquisitions have not been successful. During fiscal 2003, we sold some of the assets acquired in two prior acquisitions, discontinued a product line and closed one of our acquired facilities. As a result of these activities, we incurred significant restructuring charges and charges for the write-down of assets associated with those acquisitions. We cannot assure you that we will be successful in overcoming future problems encountered in connection with our past or future acquisitions, and our inability to do so could significantly harm our business. In addition, to the extent that the economic benefits associated with any of our acquisitions diminish in the future, we may be required to record additional write downs of goodwill, intangible assets or other assets associated with such acquisitions, which would adversely affect our operating results.

***We may lose sales if our suppliers fail to meet our needs***

We currently purchase several key components used in the manufacture of our products from single or limited sources. We depend on these current and future sources to meet our production needs. Moreover, we depend on the quality of the products supplied to us over which we have limited control. We have encountered shortages and delays in obtaining components in the past and expect to encounter shortages and delays in the future. If we cannot supply products due to a lack of components, or are unable to redesign products with other components in a timely manner, our business will be significantly harmed. We generally have no long-term contracts for any of our components. As a result, a supplier can discontinue supplying components to us without penalty. If a supplier discontinued supplying a component, our business may be harmed by the resulting product manufacturing and delivery delays. We are also subject to potential delays in the development by our suppliers of key components which may affect our ability to introduce new products.

We use rolling forecasts based on anticipated product orders to determine our component requirements. Lead times for materials and components that we order vary significantly and depend on factors such as specific supplier requirements, contract terms and current market demand for particular components. If we overestimate our component requirements, we may have excess inventory, which would increase our costs. If we underestimate our component requirements, we may have inadequate inventory, which could interrupt our manufacturing and delay delivery of our products to our customers. Any of these occurrences would significantly harm our business.

***We are dependent on widespread market acceptance of two product families, and our revenues will decline if the market does not continue to accept either of these product families***

We currently derive substantially all of our revenue from sales of our optical subsystems and components and network performance test and monitoring systems. We expect that revenue from these products will continue to account for substantially all of our revenue for the foreseeable future. Accordingly, widespread acceptance of these products is critical to our future success. If the market does not continue to accept either our optical subsystems and components or our network performance test and monitoring systems, our revenues will

decline significantly. Factors that may affect the market acceptance of our products include the continued growth of the markets for LANs, SANs, and MANs and, in particular, Gigabit Ethernet and Fibre Channel-based technologies, as well as the performance, price and total cost of ownership of our products and the availability, functionality and price of competing products and technologies.

Many of these factors are beyond our control. In addition, in order to achieve widespread market acceptance, we must differentiate ourselves from our competition through product offerings and brand name recognition. We

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cannot assure you that we will be successful in making this differentiation or achieving widespread acceptance of our products. Failure of our existing or future products to maintain and achieve widespread levels of market acceptance will significantly impair our revenue growth.

***We depend on large purchases from a few significant customers, and any loss, cancellation, reduction or delay in purchases by these customers could harm our business***

A small number of customers have consistently accounted for a significant portion of our revenues. For example, sales to our top five customers represented 42.5% and 45.2% of our revenues in the three months and nine months ended January 31, 2006, respectively. Our success will depend on our continued ability to develop and manage relationships with significant customers. Although we are attempting to expand our customer base, we expect that significant customer concentration will continue for the foreseeable future.

The markets in which we sell our optical subsystems and components products are dominated by a relatively small number of systems manufacturers, thereby limiting the number of our potential customers. Our dependence on large orders from a relatively small number of customers makes our relationship with each customer critically important to our business. We cannot assure you that we will be able to retain our largest customers, that we will be able to attract additional customers or that our customers will be successful in selling their products that incorporate our products. We have in the past experienced delays and reductions in orders from some of our major customers. In addition, our customers have in the past sought price concessions from us, and we expect that they will continue to do so in the future. Cost reduction measures that we have implemented during the past several quarters, and additional action we may take to reduce costs, may adversely affect our ability to introduce new and improved products which may, in turn, adversely affect our relationships with some of our key customers. Further, some of our customers may in the future shift their purchases of products from us to our competitors or to joint ventures between these customers and our competitors. The loss of one or more of our largest customers, any reduction or delay in sales to these customers, our inability to successfully develop relationships with additional customers or future price concessions that we may make could significantly harm our business.

***Because we do not have long-term contracts with our customers, our customers may cease purchasing our products at any time if we fail to meet our customers' needs***

Typically, we do not have long-term contracts with our customers. As a result, our agreements with our customers do not provide any assurance of future sales. Accordingly:

our customers can stop purchasing our products at any time without penalty;

our customers are free to purchase products from our competitors; and

our customers are not required to make minimum purchases.

Sales are typically made pursuant to individual purchase orders, often with extremely short lead times. If we are unable to fulfill these orders in a timely manner, it is likely that we will lose sales and customers.

***Our market is subject to rapid technological change, and to compete effectively we must continually introduce new products that achieve market acceptance***

The markets for our products are characterized by rapid technological change, frequent new product introductions, changes in customer requirements and evolving industry standards with respect to the protocols used in data communications networks. We expect that new technologies will emerge as competition and the need for higher and more cost-effective bandwidth increases. Our future performance will depend on the successful development, introduction and market acceptance of new and enhanced products that address these changes as well as current and potential customer requirements. The introduction of new and enhanced

products may cause our customers to defer or cancel orders for existing products. In addition, a slowdown in demand for existing products ahead of a new product introduction could result in a write-down in the value of inventory on hand related to existing products. We have in the past experienced a slowdown in demand for existing products and delays in new product development and such delays may occur in the future. To the extent customers defer or cancel orders for existing products due to a slowdown in demand or in the expectation of a new product release or if there is any delay in

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development or introduction of our new products or enhancements of our products, our operating results would suffer. We also may not be able to develop the underlying core technologies necessary to create new products and enhancements, or to license these technologies from third parties. Product development delays may result from numerous factors, including:

changing product specifications and customer requirements;

unanticipated engineering complexities;

expense reduction measures we have implemented, and others we may implement, to conserve our cash and attempt to maintain and increase our profitability;

difficulties in hiring and retaining necessary technical personnel;

difficulties in reallocating engineering resources and overcoming resource limitations; and

changing market or competitive product requirements.

The development of new, technologically advanced products is a complex and uncertain process requiring high levels of innovation and highly skilled engineering and development personnel, as well as the accurate anticipation of technological and market trends. We cannot assure you that we will be able to identify, develop, manufacture, market or support new or enhanced products successfully, if at all, or on a timely basis. Further, we cannot assure you that our new products will gain market acceptance or that we will be able to respond effectively to product announcements by competitors, technological changes or emerging industry standards. Any failure to respond to technological change would significantly harm our business.

***Continued competition in our markets may lead to a reduction in our prices, revenues and market share***

The markets for optical subsystems and components and network performance test and monitoring systems for use in LANs, SANs and MANs are highly competitive. Our current competitors include a number of domestic and international companies, many of which have substantially greater financial, technical, marketing and distribution resources and brand name recognition than we have. Other companies, including some of our customers, may enter the market for optical subsystems and network test and monitoring systems. We may not be able to compete successfully against either current or future competitors. Increased competition could result in significant price erosion, reduced revenue, lower margins or loss of market share, any of which would significantly harm our business. For optical subsystems, we compete primarily with JDS Uniphase Corporation, Avago Technologies, Pte. and a number of smaller vendors. For network test and monitoring systems, we compete primarily with LeCroy Corporation and Agilent Technologies, Inc. Our competitors continue to introduce improved products with lower prices, and we will have to do the same to remain competitive. In addition, some of our current and potential customers may attempt to integrate their operations by producing their own optical components and subsystems and network test and monitoring systems or acquiring one of our competitors, thereby eliminating the need to purchase our products. Furthermore, larger companies in other related industries, such as the telecommunications industry, may develop or acquire technologies and apply their significant resources, including their distribution channels and brand name recognition, to capture significant market share in the industry segments in which we participate.

***Decreases in average selling prices of our products may reduce gross margins***

The market for optical subsystems is characterized by declining average selling prices resulting from factors such as increased competition, overcapacity, the introduction of new products and increased unit volumes as manufacturers continue to deploy network and storage systems. We have in the past experienced, and in the future may experience, substantial period-to-period fluctuations in operating results due to declining average selling prices. We anticipate that average selling prices will decrease in the future in response to product

introductions by competitors or us, or by other factors, including price pressures from significant customers. Therefore, in order to achieve and sustain profitable operations, we must continue to develop and introduce on a timely basis new products that incorporate features that can be sold at higher average selling prices. Failure to do so could cause our revenues and gross margins to decline, which would result in additional operating losses and significantly harm our business.

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We may be unable to reduce the cost of our products sufficiently to enable us to compete with others. Our cost reduction efforts may not allow us to keep pace with competitive pricing pressures and could adversely affect our margins. In order to remain competitive, we must continually reduce the cost of manufacturing our products through design and engineering changes. We may not be successful in redesigning our products or delivering our products to market in a timely manner. We cannot assure you that any redesign will result in sufficient cost reductions to allow us to reduce the price of our products to remain competitive or improve our gross margins.

***Shifts in our product mix may result in declines in gross margins***

Our gross profit margins vary among our product families, and are generally higher on our network test and monitoring systems than on our optical subsystems and components. Our optical products sold for longer distance MAN and telecom applications typically have higher gross margins than our products for shorter distance LAN or SAN applications. Our gross margins are generally lower for newly introduced products and improve as unit volumes increase. Our overall gross margins have fluctuated from period to period as a result of shifts in product mix, the introduction of new products, decreases in average selling prices for older products and our ability to reduce product costs, and these fluctuations are expected to continue in the future.

***Our customers often evaluate our products for long and variable periods, which causes the timing of our revenues and results of operations to be unpredictable***

The period of time between our initial contact with a customer and the receipt of an actual purchase order may span a year or more. During this time, customers may perform, or require us to perform, extensive and lengthy evaluation and testing of our products before purchasing and using them in their equipment. Our customers do not typically share information on the duration or magnitude of these qualification procedures. The length of these qualification processes also may vary substantially by product and customer, and, thus, cause our results of operations to be unpredictable. While our potential customers are qualifying our products and before they place an order with us, we may incur substantial research and development and sales and marketing expenses and expend significant management effort. Even after incurring such costs we ultimately may not sell any products to such potential customers. In addition, these qualification processes often make it difficult to obtain new customers, as customers are reluctant to expend the resources necessary to qualify a new supplier if they have one or more existing qualified sources. Once our products have been qualified, the agreements that we enter into with our customers typically contain no minimum purchase commitments. Failure of our customers to incorporate our products into their systems would significantly harm our business.

***We depend on facilities located outside of the United States to manufacture a substantial portion of our products, which subjects us to additional risks***

In addition to our principal manufacturing facility in Malaysia, we operate smaller facilities in China and Singapore and also rely on two contract manufacturers located outside of the United States. Each of these facilities and manufacturers subjects us to additional risks associated with international manufacturing, including:

- unexpected changes in regulatory requirements;
- legal uncertainties regarding liability, tariffs and other trade barriers;
- inadequate protection of intellectual property in some countries;
- greater incidence of shipping delays;
- greater difficulty in overseeing manufacturing operations;

greater difficulty in hiring technical talent needed to oversee manufacturing operations;

potential political and economic instability; and

the outbreak of infectious diseases such as severe acute respiratory syndrome, or SARS, which could result in travel restrictions or the closure of our facilities or the facilities of our customers and suppliers.

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Any of these factors could significantly impair our ability to source our contract manufacturing requirements internationally.

***Our future operating results may be subject to volatility as a result of exposure to foreign exchange risks.***

We are exposed to foreign exchange risks. Foreign currency fluctuations may affect both our revenues and our costs and expenses and significantly affect our operating results. Prices for our products are currently denominated in U.S. dollars for sales to our customers throughout the world. If there is a significant devaluation of the currency in a specific country relative to the dollar, the prices of our products will increase relative to that country's currency, our products may be less competitive in that country and our revenues may be adversely affected.

Although we price our products in U.S. dollars, portions of both our cost of revenues and operating expenses are incurred in foreign currencies, principally the Malaysian ringit and the Chinese yuan. As a result, we bear the risk that the rate of inflation in one or more countries will exceed the rate of the devaluation of that country's currency in relation to the U.S. dollar, which would increase our costs as expressed in U.S. dollars. On July 21, 2005, the People's Bank of China announced that the yuan will no longer be pegged to the U.S. dollar but will be allowed to float in a band (and, to a limited extent, increase in value) against a basket of foreign currencies. This development increases the risk that Chinese-sourced materials and labor could become more expensive for us. To date, we have not engaged in currency hedging transactions to decrease the risk of financial exposure from fluctuations in foreign exchange rates.

***Our business and future operating results are subject to a wide range of uncertainties arising out of the continuing threat of terrorist attacks and ongoing military action in the Middle East***

Like other U.S. companies, our business and operating results are subject to uncertainties arising out of the continuing threat of terrorist attacks on the United States and ongoing military action in the Middle East, including the economic consequences of the war in Iraq or additional terrorist activities and associated political instability, and the impact of heightened security concerns on domestic and international travel and commerce. In particular, due to these uncertainties we are subject to:

increased risks related to the operations of our manufacturing facilities in Malaysia;

greater risks of disruption in the operations of our Asian contract manufacturers and more frequent instances of shipping delays; and

the risk that future tightening of immigration controls may adversely affect the residence status of non-U.S. engineers and other key technical employees in our U.S. facilities or our ability to hire new non-U.S. employees in such facilities.

***We have made and may continue to make strategic investments which may not be successful, may result in the loss of all or part of our invested capital and may adversely affect our operating results***

Through January 2006, we recorded minority equity investments in early-stage technology companies, totaling \$52.4 million. Our investments in these early stage companies were primarily motivated by our desire to gain early access to new technology. We intend to review additional opportunities to make strategic equity investments in pre-public companies where we believe such investments will provide us with opportunities to gain access to important technologies or otherwise enhance important commercial relationships. We have little or no influence over the early-stage companies in which we have made or may make these strategic, minority equity investments. Each of these investments in pre-public companies involves a high degree of risk. We may not be successful in achieving the financial, technological or commercial advantage upon which any given investment is premised, and failure by the early-stage company to achieve its own business

objectives or to raise capital needed on acceptable economic terms could result in a loss of all or part of our invested capital. In fiscal 2003, we wrote off \$12.0 million in two investments which became impaired. In fiscal 2004, we wrote off \$1.6 million in two additional investments, and in fiscal 2005, we wrote off \$10.0 million in another investment. During the first quarter of fiscal 2006 we reclassified \$4.2 million of an investment associated with the Infineon acquisition to goodwill as the investment was deemed to have no value. In addition, during the three and nine months ended January 31, 2006, we

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recognized \$476,000 and \$1.5 million, respectively, of losses related to another investment accounted for under the equity method. We may be required to write off all or a portion of the \$15.7 million in such investments remaining on our balance sheet as of January 31, 2006 in future periods and to recognize additional losses related to certain of our investments.

***We are subject to pending legal proceedings***

A securities class action lawsuit was filed on November 30, 2001 in the United States District Court for the Southern District of New York, purportedly on behalf of all persons who purchased our common stock from November 17, 1999 through December 6, 2000. The complaint named as defendants Finisar, Jerry S. Rawls, our President and Chief Executive Officer, Frank H. Levinson, our former Chairman of the Board and Chief Technical Officer, Stephen K. Workman, our Senior Vice President and Chief Financial Officer, and an investment banking firm that served as an underwriter for our initial public offering in November 1999 and a secondary offering in April 2000. The complaint, as subsequently amended, alleges violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b) and 20(b) of the Securities Exchange Act of 1934. No specific damages are claimed. Similar allegations have been made in lawsuits relating to more than 300 other initial public offerings conducted in 1999 and 2000, which were consolidated for pretrial purposes. In October 2002, all claims against the individual defendants were dismissed without prejudice. On February 19, 2003, the court denied our motion to dismiss the complaint. In July 2004, we and the individual defendants accepted a settlement proposal made to all of the issuer defendants. Under the terms of the settlement, the plaintiffs will dismiss and release all claims against participating defendants in exchange for a contingent payment guaranty by the insurance companies collectively responsible for insuring the issuers in all related cases, and the assignment or surrender to the plaintiffs of certain claims the issuer defendants may have against the underwriters. Under the guaranty, the insurers will be required to pay the amount, if any, by which \$1 billion exceeds the aggregate amount ultimately collected by the plaintiffs from the underwriter defendants in all the cases. If the plaintiffs fail to recover \$1 billion and payment is required under the guaranty, we would be responsible to pay our pro rata portion of the shortfall, up to the amount of the self-insured retention under our insurance policy, which may be up to \$2 million. The timing and amount of payments that we could be required to make under the proposed settlement will depend on several factors, principally the timing and amount of any payment that the insurers may be required to make pursuant to the \$1 billion guaranty. The Court held hearings on April 13, 2005 and September 6, 2005 to determine the form, substance and program of class notice and the scheduling of a fairness hearing for final approval of the settlement. The Court held a hearing on April 24, 2006 to consider final approval of the settlement and has yet to issue a decision. If the settlement is not approved by the Court, we intend to defend the lawsuit vigorously. Because of the inherent uncertainty of litigation, however, we cannot predict its outcome. If, as a result of this dispute, we are required to pay significant monetary damages, our business would be substantially harmed.

***We have identified material weaknesses in our internal control over financial reporting which could lead to errors in our financial statements***

As discussed in the section of Management's Discussion and Analysis in our Form 10-Q Report for the quarter ended January 31, 2006 titled Management's Report on Internal Control Over Financial Reporting, which is incorporated herein by reference, we identified several material weaknesses in our internal control over financial reporting that existed as of April 30, 2005. Although steps have been taken and are continuing to be taken to remediate these deficiencies, there can be no assurance that these remediation steps will be successful or that, as a result of our ongoing evaluation of our internal control over financial reporting, we will not identify additional material weaknesses. Although management determined that the material weaknesses did not affect the financial results reported in our consolidated financial statements as of, and for the year ended, April 30, 2005, there can be no assurance that unremediated weaknesses in our internal control over financial reporting will not result in errors that are material to the financial results reported in our consolidated financial statements for future periods.



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***Because of competition for technical personnel, we may not be able to recruit or retain necessary personnel***

We believe our future success will depend in large part upon our ability to attract and retain highly skilled managerial, technical, sales and marketing, finance and manufacturing personnel. In particular, we may need to increase the number of technical staff members with experience in high-speed networking applications as we further develop our product lines. Competition for these highly skilled employees in our industry is intense. Our failure to attract and retain these qualified employees could significantly harm our business. The loss of the services of any of our qualified employees, the inability to attract or retain qualified personnel in the future or delays in hiring required personnel could hinder the development and introduction of and negatively impact our ability to sell our products. In addition, employees may leave our company and subsequently compete against us. Moreover, companies in our industry whose employees accept positions with competitors frequently claim that their competitors have engaged in unfair hiring practices. We have been subject to claims of this type and may be subject to such claims in the future as we seek to hire qualified personnel. Some of these claims may result in material litigation. We could incur substantial costs in defending ourselves against these claims, regardless of their merits.

***Our products may contain defects that may cause us to incur significant costs, divert our attention from product development efforts and result in a loss of customers***

Our products are complex and defects may be found from time to time. Networking products frequently contain undetected software or hardware defects when first introduced or as new versions are released. In addition, our products are often embedded in or deployed in conjunction with our customers' products which incorporate a variety of components produced by third parties. As a result, when problems occur, it may be difficult to identify the source of the problem. These problems may cause us to incur significant damages or warranty and repair costs, divert the attention of our engineering personnel from our product development efforts and cause significant customer relation problems or loss of customers, all of which would harm our business.

***Our failure to protect our intellectual property may significantly harm our business***

Our success and ability to compete is dependent in part on our proprietary technology. We rely on a combination of patent, copyright, trademark and trade secret laws, as well as confidentiality agreements to establish and protect our proprietary rights. We license certain of our proprietary technology, including our digital diagnostics technology, to customers who include current and potential competitors, and we rely largely on provisions of our licensing agreements to protect our intellectual property rights in this technology. Although a number of patents have been issued to us, we have obtained a number of other patents as a result of our acquisitions, and we have filed applications for additional patents, we cannot assure you that any patents will issue as a result of pending patent applications or that our issued patents will be upheld. Any infringement of our proprietary rights could result in significant litigation costs, and any failure to adequately protect our proprietary rights could result in our competitors offering similar products, potentially resulting in loss of a competitive advantage and decreased revenues. Despite our efforts to protect our proprietary rights, existing patent, copyright, trademark and trade secret laws afford only limited protection. In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States. Attempts may be made to copy or reverse engineer aspects of our products or to obtain and use information that we regard as proprietary. Accordingly, we may not be able to prevent misappropriation of our technology or deter others from developing similar technology. Furthermore, policing the unauthorized use of our products is difficult and expensive. We are currently engaged in pending litigation to enforce certain of our patents, and additional litigation may be necessary in the future to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. In connection with the pending litigation, substantial management time has been, and will continue to be, expended. In addition, we have incurred, and we expect to continue to incur, substantial legal expenses in connection with these pending lawsuits. These costs and this diversion of resources could significantly harm our business.



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***Claims that we infringe third-party intellectual property rights could result in significant expenses or restrictions on our ability to sell our products***

The networking industry is characterized by the existence of a large number of patents and frequent litigation based on allegations of patent infringement. We have been involved in the past as a defendant in patent infringement lawsuits. From time to time, other parties may assert patent, copyright, trademark and other intellectual property rights to technologies and in various jurisdictions that are important to our business. Any claims asserting that our products infringe or may infringe proprietary rights of third parties, if determined adversely to us, could significantly harm our business. Any claims, with or without merit, could be time-consuming, result in costly litigation, divert the efforts of our technical and management personnel, cause product shipment delays or require us to enter into royalty or licensing agreements, any of which could significantly harm our business. Royalty or licensing agreements, if required, may not be available on terms acceptable to us, if at all. In addition, our agreements with our customers typically require us to indemnify our customers from any expense or liability resulting from claimed infringement of third party intellectual property rights. In the event a claim against us was successful and we could not obtain a license to the relevant technology on acceptable terms or license a substitute technology or redesign our products to avoid infringement, our business would be significantly harmed.

***Our business and future operating results may be adversely affected by events outside our control***

Our business and operating results are vulnerable to events outside of our control, such as earthquakes, fire, power loss, telecommunications failures and uncertainties arising out of terrorist attacks in the United States and overseas. Our corporate headquarters and a portion of our manufacturing operations are located in California. California in particular has been vulnerable to natural disasters, such as earthquakes, fires and floods, and other risks which at times have disrupted the local economy and posed physical risks to our property. We are also dependent on communications links with our overseas manufacturing locations and would be significantly harmed if these links were interrupted for any significant length of time. We presently do not have adequate redundant, multiple site capacity if any of these events were to occur, nor can we be certain that the insurance we maintain against these events would be adequate.

***Our executive officers and directors and entities affiliated with them own a large percentage of our voting stock, resulting in a substantial concentration of control and could have the effect of delaying or preventing a change in our control***

As of April 30, 2006, our executive officers and directors and certain entities affiliated with them beneficially owned approximately 24.5 million shares of our common stock, or approximately 8.0% of the outstanding shares. These stockholders, acting together, may be able to substantially influence the outcome of matters requiring approval by stockholders, including the election or removal of directors and the approval of mergers or other business combination transactions. In addition, certain funds managed by VantagePoint Venture Partners, of which David C. Fries, a director of the Company, is a managing director hold approximately 5.6% of our outstanding common stock. Accordingly, if VantagePoint Venture Partners continues to hold its shares, it may also be able to influence the outcome of matters requiring stockholder approval, and VantagePoint Venture Partners, our executive officers, directors and entities affiliated with them, voting together, may be able to effectively control the outcome of such matters. This concentration of ownership could have the effect of delaying or preventing a change in control or otherwise discouraging a potential acquirer from attempting to obtain control of us, which in turn could have an adverse effect on the market price of our common stock or prevent our stockholders from realizing a premium over the market price for their shares of common stock.

***The conversion of our outstanding convertible subordinated notes would result in substantial dilution to our current stockholders***

We currently have outstanding 51/4% convertible subordinated notes due 2008 in the principal amount of \$100.3 million and 21/2% convertible subordinated notes due 2010 in the principal amount of \$150.0 million.

The 5 1/4% notes are convertible, at the option of the holder, at any time on or prior to maturity into shares of our common stock at a conversion price of \$5.52 per share. The 2 1/2% notes are convertible, at the option of the holder, at any time on or prior to maturity into shares of our common stock at a conversion price of \$3.705 per share. An aggregate of

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58,647,060 shares of common stock would be issued upon the conversion of all outstanding convertible subordinated notes at these exchange rates, which would significantly dilute the voting power and ownership percentage of our existing stockholders. Holders of the notes due in 2010 have the right to require us to repurchase some or all of their notes on October 15, 2007. We may choose to pay the repurchase price in cash, shares of our common stock or a combination thereof. Our right to repurchase the notes, in whole or in part, with shares of our common stock is subject to the registration of the shares of our common stock to be issued upon repurchase under the Securities Act, if required, and registration with or approval of any state or federal governmental authority if such registration or approval is required before such shares may be issued. We have previously entered into privately negotiated transactions with certain holders of our convertible subordinated notes for the repurchase of notes in exchange for a greater number of shares of our common stock than would have been issued had the principal amount of the notes been converted at the original conversion rate specified in the notes, thus resulting in more dilution. Although we do not currently have any plans to enter into similar transactions in the future, if we were to do so there would be additional dilution to the voting power and percentage ownership of our existing stockholders.

***Delaware law, our charter documents and our stockholder rights plan contain provisions that could discourage or prevent a potential takeover, even if such a transaction would be beneficial to our stockholders***

Some provisions of our certificate of incorporation and bylaws, as well as provisions of Delaware law, may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable. These include provisions:

authorizing the board of directors to issue additional preferred stock;

prohibiting cumulative voting in the election of directors;

limiting the persons who may call special meetings of stockholders;

prohibiting stockholder actions by written consent;

creating a classified board of directors pursuant to which our directors are elected for staggered three-year terms;

permitting the board of directors to increase the size of the board and to fill vacancies;

requiring a super-majority vote of our stockholders to amend our bylaws and certain provisions of our certificate of incorporation; and

establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law which limit the right of a corporation to engage in a business combination with a holder of 15% or more of the corporation's outstanding voting securities, or certain affiliated persons.

In addition, in September 2002, our board of directors adopted a stockholder rights plan under which our stockholders received one share purchase right for each share of our common stock held by them. Subject to certain exceptions, the rights become exercisable when a person or group (other than certain exempt persons) acquires, or announces its intention to commence a tender or exchange offer upon completion of which such person or group would acquire, 20% or more of our common stock without prior board approval. Should such an event occur, then, unless the rights are redeemed or have expired, our stockholders, other than the acquirer, will be entitled to purchase shares of our common stock at a 50% discount from its then-Current Market Price

(as defined) or, in the case of certain business combinations, purchase the common stock of the acquirer at a 50% discount.

Although we believe that these charter and bylaw provisions, provisions of Delaware law and our stockholder rights plan provide an opportunity for the board to assure that our stockholders realize full value for their investment, they could have the effect of delaying or preventing a change of control, even under circumstances that some stockholders may consider beneficial.

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***Our stock price has been and is likely to continue to be volatile***

The trading price of our common stock has been and is likely to continue to be subject to large fluctuations. Our stock price may increase or decrease in response to a number of events and factors, including:

trends in our industry and the markets in which we operate;

changes in the market price of the products we sell;

changes in financial estimates and recommendations by securities analysts;

acquisitions and financings;

quarterly variations in our operating results;

the operating and stock price performance of other companies that investors in our common stock may deem comparable; and

purchases or sales of blocks of our common stock.

Part of this volatility is attributable to the current state of the stock market, in which wide price swings are common. This volatility may adversely affect the prices of our common stock regardless of our operating performance.

**USE OF PROCEEDS**

We will not receive any proceeds from the sale by the selling stockholders of the common stock offered hereby.

**DIVIDEND POLICY**

We have never paid cash dividends on our common stock. We currently intend to retain earnings for use in our business and do not anticipate paying any cash dividend in the foreseeable future. Any future declaration and payment of dividends will be subject to the discretion of our board of directors, will be subject to applicable law and will depend on our results of operations, earnings, financial condition, contractual limitations, cash requirements, future prospects and other factors deemed relevant by our Board of Directors.

**DESCRIPTION OF CAPITAL STOCK**

Our authorized capital stock consists of 750,000,000 shares of common stock, \$0.001 par value per share, and 5,000,000 shares of preferred stock, \$0.001 par value per share.

The following is a summary of some of the terms of our common stock, preferred stock, charter, bylaws and stockholder rights plan and certain provisions of Delaware Law. The following summary does not purport to be complete and is qualified in its entirety by reference to the terms of our charter, bylaws, stockholder rights plan and Delaware law. Please see those documents and Delaware law for further information.

**Common Stock**

As of April 30, 2006, there were 305,512,111 shares of our common stock outstanding. The holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Holders of common stock are not entitled to cumulate their votes in the election of directors. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors

may elect all of the directors standing for election. Subject to preferences applicable to any outstanding preferred stock, holders of common stock are entitled to receive ratably any dividends declared by the Board of Directors out of funds legally available therefor. See Dividend Policy. In the event of a liquidation, dissolution or winding up of Finisar, holders of common stock are entitled to share ratably in the assets remaining after payment of liabilities and the liquidation preferences of any outstanding preferred stock. Holders of our common stock have no preemptive,

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conversion or redemption rights. Each outstanding share of common stock is, and all shares of common stock issued upon conversion of the notes will be, fully paid and non-assessable.

## **Preferred Stock**

Our Board of Directors has the authority, without further action by our stockholders, to issue preferred stock in one or more series. In addition, the Board of Directors may fix the rights, preferences and privileges of any preferred stock it determines to issue. Any or all of these rights may be superior to the rights of the common stock. Preferred stock could thus be issued quickly with terms calculated to delay or prevent a change in control of Finisar or to make removal of management more difficult. Additionally, the issuance of preferred stock may decrease the market price of our common stock or otherwise adversely affect the rights of holders of our common stock. At present, we have no plans to issue any shares of preferred stock.

## **Registration Rights**

### ***VantagePoint Venture Partners***

Under our agreement with Infineon, we agreed to file, at our expense, with the Commission a shelf registration statement on Form S-3 covering the resale of 34,000,000 shares of our common stock issued in connection with the acquisition of certain assets related to the transceiver and transponder business of Infineon's fiber optics business unit. Infineon sold the 34,000,000 shares of common stock to certain funds managed by VantagePoint in a private transaction and assigned its registration rights to VantagePoint. We agreed to keep the registration statement effective until the earlier of:

such time as all of the shares have been sold by VantagePoint; or

such time as VantagePoint is permitted to sell all of the shares held by it without registration pursuant to Rule 144(k) under the Securities Act (or any similar provision then in force permitting the sale of restricted securities without limitation on the amount of securities sold or the manner of sale).

We will be permitted to suspend the use of the prospectus that is part of the shelf registration statement under certain circumstances relating to material undisclosed information or events concerning us, provided that such delay does not exceed three (3) months and may not be exercised more than once in any 12-month period. Additional information relating to the VantagePoint transaction can be found under the heading *Selling Stockholders*.

## **Antitakeover Provisions**

### ***Delaware Law***

Finisar is subject to Section 203 of the Delaware General Corporation Law regulating corporate takeovers, which prohibits a Delaware corporation from engaging in any business combination with an interested stockholder for a period of three years, unless:

prior to the time that a stockholder became an interested stockholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

at or subsequent to the time that a stockholder became an interested stockholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $\frac{2}{3}$ % of the outstanding voting stock which is not owned by the interested stockholder.

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Except as otherwise specified in Section 203, an interested stockholder is defined to include (a) any person that is the owner of 15% or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation at any time within three years immediately prior to the date of determination and (b) the affiliates and associates of any such person.

***Certificate of Incorporation and Bylaw Provisions***

Provisions of our certificate of incorporation and bylaws may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of Finisar. These provisions could cause the value of the notes and the price of our common stock to decrease. Some of these provisions allow us to issue preferred stock without any vote or further action by the stockholders, eliminate the right of stockholders to act by written consent without a meeting and eliminate cumulative voting in the election of directors. These provisions may make it more difficult for stockholders to take specific corporate actions and could have the effect of delaying or preventing a change in control of Finisar.

Our certificate of incorporation provides that the Board of Directors will be divided into three classes of directors, with each class serving a staggered three-year term. The classification system of electing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of us and may maintain the incumbency of the Board of Directors, because the classification of the Board of Directors generally increases the difficulty of replacing a majority of the directors.

***Stockholder Rights Plan***

In September 2002, our Board of Directors adopted a stockholder rights plan under which our stockholders received one share purchase right for each share of our common stock held by them. The rights are not currently exercisable or tradable separately from our common stock and are currently evidenced by the common stock certificates. The rights expire on September 24, 2012 unless earlier redeemed or exchanged by us. Subject to exceptions, the rights will separate from our common stock and become exercisable when a person or group (other than certain exempt persons) acquires, or announces its intention to commence a tender or exchange offer upon completion of which such person or group would acquire, 20% or more of our common stock without prior Board approval. Should such an event occur, then, unless the rights are redeemed or exchanged or have expired, Finisar stockholders, other than the acquiror, will be entitled to purchase shares of our common stock at a 50% discount from its then-Current Market Price (as defined) or, in the case of certain business combinations, purchase the common stock of the acquiror at a 50% discount.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer and Trust Company.

**SELLING STOCKHOLDERS**

The shares of common stock offered hereby were issued to Infineon in a private placement as consideration for our acquisition of certain assets related to the transceiver and transponder business of Infineon's fiber optics business unit. Infineon sold the shares to certain funds managed by VantagePoint Venture Partners (collectively VantagePoint) in a private transaction in April 2005. As used in this prospectus, selling stockholders shall include individuals and/or entities to whom VantagePoint may assign its registration rights, including other funds under common control with VantagePoint, such funds' limited or general partners, limited liability company members and/or individuals or entities who have been granted by a limited partnership or limited liability company the right to receive such distributions. The selling stockholders may from time to time offer and sell pursuant to this prospectus any or all of the common stock offered hereby.



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The following table sets forth the number of shares owned by the selling stockholders as of May 31, 2006. None of the selling stockholders has had a material relationship with Finisar within the past three years other than as a result of the ownership of the shares of our common stock listed below. No estimate can be given as to the amount of shares that will be held by the selling stockholders after completion of this offering because the selling stockholders may offer all, some or none of the shares.

<b>Selling Stockholder</b>	<b>Shares of Common Stock Beneficially Owned Number(1)</b>	<b>Shares of Common Stock Beneficially Owned Percentage</b>	<b>Offered Hereby</b>	<b>Owned After the Offering</b>
VantagePoint Venture Partners III(Q), L.P.(2)	3,043,339	1.00%	3,043,339	0
VantagePoint Venture Partners III, L.P.(2)	380,572	*	380,572	0
VantagePoint Venture Partners IV(Q), L.P.(3)	12,330,626	4.04	12,330,626	0
VantagePoint Venture Partners IV, L.P.(3)	1,290,473	*	1,290,473	0
VantagePoint Venture Partners IV Principals Fund, L.P.(3)	44,880	*	44,880	0
A. Nathaniel Goldhaber	4,930	*	4,930	0
A.J. Stein Family Partnership Dated 3-21-88	12,594	*	12,594	0
Alan E. Salzman	66,492	*	66,492	0
Alan E. Salzman 2003 Annuity Trust dated 12/31/03	3,332	*	3,332	0
Bank of Bahrain and Kuwait B.S.C	45,132	*	45,132	0
Bass Trust	9,492	*	9,492	0
BellSouth Master Pension Trust	967,497	*	967,497	0
Bruce Kirschner	7,848	*	7,848	0
California Emerging Ventures II, LLC	451,324	*	451,324	0
California Emerging Ventures, LLC	93,068	*	93,068	0
Charles G. Phillips	15,697	*	15,697	0
Chris Heegard	7,119	*	7,119	0
CIBC Capital Corporation	135,397	*	135,397	0
CIBC WMC, Inc.	62,046	*	62,046	0
Communications Fund I, L.P.	94,923	*	94,923	0
Comven Fund II	12,409	*	12,409	0
Comven III	9,492	*	9,492	0
Connie Lea Lurie	4,746	*	4,746	0
D.R. Stephens Industrial Partners, LLC	2,373	*	2,373	0
D.R. Stephens Separate Property Trust UAD 5-1-83	15,697	*	15,697	0
DAJ Enterprises LP	3,102	*	3,102	0
David L. House	6,573	*	6,573	0

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David W. Ehret	7,119	*	7,119	0
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<b>Selling Stockholder</b>	<b>Shares of Common Stock Beneficially Owned Number(1)</b>	<b>Shares of Common Stock Beneficially Owned Percentage</b>	<b>Offered Hereby</b>	<b>Owned After the Offering</b>
Dennis M. Brown	9,492	*	9,492	0
DLJ ESC II L.P.	9,492	*	9,492	0
Edward E. Luck	4,746	*	4,746	0
F. Grant Saviers	12,594	*	12,594	0
F.R. Holdings, Inc.	4,746	*	4,746	0
Francine Gani 2002 Living Trust	4,746	*	4,746	0
Gary E. Gigot	3,102	*	3,102	0
Giacomo Marini	9,492	*	9,492	0
Gina Mausner as trustee for the EOS Trust	4,746	*	4,746	0
Gordon Campbell	1,643	*	1,643	0
Greater Bay Bancorp	18,053	*	18,053	0
Harry J. Saal Trust DTD 7-19-72, As Amended	6,573	*	6,573	0
Henry L. Druker	1,551	*	1,551	0
Herbert Partners, A California Limited Partnership	2,327	*	2,327	0
Horizons Cayman Trading Limited	90,265	*	90,265	0
Ira Ehrenpreis	1,643	*	1,643	0
James and Cecilia Herbert 1994 Revocable Trust				
Agreement dated 11-18-94	11,819	*	11,819	0
James D. Marver	67,603	*	67,603	0
James D. Marver 2003 Annuity Trust dated 12/31/03	5,554	*	5,554	0
Jarrat Enterprises Limited Partnership	6,205	*	6,205	0
Jillian M. Salzman 2003 Annuity Trust dated 12/31/03	3,332	*	3,332	0
John A. Blaeser	3,286	*	3,286	0
John J. Troy	1,643	*	1,643	0
John J. Troy Sep IRA	4,513	*	4,513	0
John W. Buoymaster	1,643	*	1,643	0
Kendall Partners LLC	62,046	*	62,046	0
Los Angeles City Employees Retirement System	135,397	*	135,397	0
Marc E. Jones	6,573	*	6,573	0
Mary F. Gigot	3,102	*	3,102	0
Mendez 1992 Trust Dated 10-14-92	3,286	*	3,286	0
New York Life Insurance Company	62,046	*	62,046	0
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<b>Selling Stockholder</b>	<b>Shares of Common Stock Beneficially Owned Number(1)</b>	<b>Shares of Common Stock Beneficially Owned Percentage</b>	<b>Offered Hereby</b>	<b>Owned After the Offering</b>
New York State Teachers Retirement System	676,986	*	676,986	0
Nilgrove Trading Limited	18,985	*	18,985	0
Norman Braman	31,394	*	31,394	0
Oki Enterprises 1999, LLC	6,573	*	6,573	0
Oregon Public Employees Retirement Fund	451,324	*	451,324	0
Overbrook Limited Partnership	47,461	*	47,461	0
Partic Communications Inc.	428,713	*	428,713	0
Peace House Properties Company	485,150	*	485,150	0
Pincus Investments	13,146	*	13,146	0
Piper Jaffray Private Equity Partners I, L.P.	142,384	*	142,384	0
Rodney Nigel Turner	18,053	*	18,053	0
RSIS Business Trust	6,205	*	6,205	0
Safi U. Qureshey Family Trust dated 5/21/1984	4,715	*	4,715	0
Sal. Oppenheim Jr. & Cle. Kommanditgesellschaft auf Aktien	94,923	*	94,923	0
Salomon Smith Barney Venture Opportunities Fund III, L.P.	90,265	*	90,265	0
Salomon Smith Barney Venture Opportunities Fund, L.P.	62,046	*	62,046	0
Saratoga Investments, LP	168,262	*	168,262	0
Simon J. Blattner	15,697	*	15,697	0
Skyline Investment Partnership	9,026	*	9,026	0
Skyline Nevada, LLC	4,591	*	4,591	0
Southern Investments Holding Corp.	18,985	*	18,985	0
Suzanne Troy Cole Sep IRA	4,513	*	4,513	0
Swiss Re Partnership Holding AG	228,465	*	228,465	0
Teachers Retirement System of the State of Illinois	676,986	*	676,986	0
Travelers Indemnity Company	15,821	*	15,821	0
United Gulf Investments Limited	18,985	*	18,985	0
Uns Safi Qureshey Investment Trust dated 12/19/91	1,551	*	1,551	0
VantagePoint Ltd.	29,336	*	29,336	0
VantagePoint Venture Associates IV, L.L.C.	449	*	449	0
VenCap 6 Limited	45,132	*	45,132	0
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<b>Selling Stockholder</b>	<b>Shares of Common Stock Beneficially Owned Number(1)</b>	<b>Shares of Common Stock Beneficially Owned Percentage</b>	<b>Offered Hereby</b>	<b>Owned After the Offering</b>
VenCap 7 Limited	62,046	*	62,046	0
VenCap 9 Limited	90,265	*	90,265	0
Washington State Investment Board	411,799	*	411,799	0
Wholly Cow Limited Partnership	3,102	*	3,102	0
William Jefferson Marshall	6,573	*	6,573	0
Wolfson Equities	62,046	*	62,046	0
Zeshan Neil Qureshey Investment Trust dated 12/19/91	1,551	*	1,551	0
<b>Total:</b>	<b>24,145,055</b>	<b>7.9%</b>	<b>24,145,055</b>	<b>0</b>

\* Less than 1%

- (1) This registration statement shall also cover any additional shares of Finisar common stock which become issuable in connection with the shares registered for sale hereby by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of Finisar common stock.
- (2) VantagePoint Venture Associates III, L.L.C. ( VP III LLC ), a Delaware limited liability company, is the general partner of VantagePoint Venture Partners III (Q), L.P. ( VP III (Q) LP ) and VantagePoint Venture Partners III, L.P. ( VP III LP ), each a Delaware limited partnership, and may be deemed to beneficially own, and share the power to vote and dispose of, the shares acquired by each of VP III (Q) LP and VP III LP. James D. Marver and Alan E. Salzman are the managing members of VP III LLC, and may be deemed to beneficially own, and share the power to vote and dispose of, the shares acquired by each of VP III (Q) LP and VP III LP. Each of Mr. Marver and Mr. Salzman disclaims ownership of the shares held by each of VP III (Q) LP and VP III LP, other than the shares in which they have a pecuniary interest.
- (3) VantagePoint Venture Associates IV, L.L.C. ( VP IV LLC ), a Delaware limited liability company, is the general partner of VantagePoint Venture Partners IV (Q), L.P. ( VP IV (Q) LP ), VantagePoint Venture Partners IV, L.P. ( VP Partners LP ) and VantagePoint Venture Partners IV Principals Fund, L.P. ( VP Fund LP ), each a Delaware limited partnership, and may be deemed to beneficially own, and share the power to vote and dispose of, the shares acquired by each of VP IV (Q) LP, VP Partners LP and VP Fund LP. James D. Marver and Alan E. Salzman are the managing members of VP IV LLC, and may be deemed to beneficially own, and share the power to vote and dispose of, the shares acquired by each of VP IV (Q) LP, VP Partners LP and VP Fund LP. Each of Mr. Marver and Mr. Salzman disclaims ownership of the shares held by each of VP IV (Q) LP, VP Partners LP and VP Fund LP, other than the shares in which they have a pecuniary interest.

### **PLAN OF DISTRIBUTION**

We will not receive any of the proceeds of the sale of the common stock offered by this prospectus. The common stock may be sold from time to time to purchasers:

directly by the selling stockholders or their pledgees, donees, transferees or any successor in interest (all of whom may be selling stockholders); or

through underwriters, broker-dealers or agents who may receive compensation in the form of discounts, concessions or commissions from the selling stockholders or the purchasers of the common stock.

The selling stockholders and any such broker-dealers or agents who participate in the distribution of the common stock may be deemed to be underwriters. As a result, any profits on the sale of the common stock by the selling stockholders and any discounts, commissions or concessions received by any such broker-dealers or agents

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might be deemed to be underwriting discounts and commissions under the Securities Act. If the selling stockholders were to be deemed an underwriter, such selling stockholders may be subject to certain statutory liabilities of, including, but not limited to, Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act. If the common stock is sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions.

The common stock may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in transactions:

- on any national securities exchange or quotation service on which the common stock may be listed or quoted at the time of the sale, including the Nasdaq National Market;
- in the over-the-counter market;
- otherwise than on such exchanges or services or in the over-the-counter market; or
- through the writing of options or other derivative securities.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with sales of common stock, the selling stockholders may enter into hedging transactions with broker-dealers. These broker-dealers may in turn engage in short sales of the common stock in the course of hedging their positions. The selling stockholders may also sell the common stock short and deliver notes and the underlying common stock to close out short positions, or loan or pledge common stock to broker-dealers that in turn may sell the common stock.

To our knowledge, there are currently no plans, arrangements or understandings between the selling stockholders and any underwriter, broker-dealer or agent regarding the sale of the common stock by the selling stockholders. The selling stockholders may decide not to sell some or all of the common stock offered pursuant to this prospectus. The selling stockholders may instead transfer, devise or gift the common stock by other means not described in this prospectus. In addition, any common stock covered by this prospectus that qualify for sale pursuant to Rule 144 of the Securities Act may be sold under Rule 144 rather than pursuant to this prospectus.

The selling stockholders and any other persons participating in such distribution will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the common stock by the selling stockholders and any other such persons. In addition, Regulation M under the Exchange Act may restrict the ability of any person engaged in the distribution of the common stock to engage in market-making activities with respect to the underlying common stock being distributed for a period of up to five business days prior to the commencement of such distribution. This may affect the marketability of the common stock and the ability of any person or entity to engage in market-making activities with respect to the common stock.

We agreed with VantagePoint to keep the registration statement of which this prospectus constitutes a part effective until the earlier of:

such time as all of the shares have been sold by the selling stockholders pursuant to this prospectus; or

such time as the selling stockholders are permitted to sell all of the shares held by them without registration pursuant to Rule 144(k) under the Securities Act (or any similar provision then in force permitting the sale of restricted securities without limitation on the amount of securities sold or the manner of sale).

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Pursuant to the registration rights agreement filed as an exhibit to the registration statement of which this prospectus constitutes a part, we and the selling stockholders will be indemnified by the other against certain liabilities, including certain liabilities under the Securities Act, or will be entitled to contribution in connection with these liabilities.

We have agreed to pay substantially all of the expenses incidental to the registration, offering and sale of the common stock to the public other than commissions, fees and discounts of underwriters, brokers, dealers and agents.

**LEGAL MATTERS**

The validity of the shares of common stock offered hereby will be passed upon for us by DLA Piper Rudnick Gray Cary US LLP, East Palo Alto, California.

**EXPERTS**

The consolidated financial statements of Finisar Corporation appearing in Finisar Corporation's Annual Report (Form 10-K) for the year ended April 30, 2005 (including the schedule appearing therein), and Finisar Corporation management's assessment of the effectiveness of internal control over financial reporting as of April 30, 2005 included therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in its reports thereon (which concluded, among other things, that Finisar Corporation did not maintain effective internal control over financial reporting as of April 30, 2005, based on Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission, because of the effects of the material weaknesses described therein), included therein, and incorporated herein by reference. Such financial statements and management's assessment have been incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

We have filed with the SEC a registration statement on Form S-3, including the exhibits and schedules thereto, under the Securities Act with respect to the shares to be sold in this offering. This prospectus does not contain all the information set forth in the registration statement. For further information about us and the shares to be sold in this offering, please refer to the registration statement. Statements contained in this prospectus as to the contents of any contract, agreement or other document referred to, are not necessarily complete, and in each instance please refer to the copy of the contract, agreement or other document filed as an exhibit to the registration statement, each statement being qualified in all respects by this reference.

We file periodic and current reports, proxy statements and other information with the SEC. You may read and copy all or any portion of any materials we file with the SEC at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You can request copies of these documents upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. The SEC also maintains a web site that contains reports, proxy statements and other information regarding registrants that file electronically with the SEC. The address of that web site is [www.sec.gov](http://www.sec.gov).

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The rules of the SEC allow us to incorporate by reference information into this prospectus, meaning that we can disclose important information to you by referring to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. This prospectus

incorporates by reference the documents listed below:

Our Annual Report on Form 10-K for the year ended April 30, 2005;

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Our definitive Proxy Statement on Schedule 14A filed on September 15, 2005;

Our Quarterly Reports on Form 10-Q for the quarters ended July 31, 2005, October 31, 2005 and January 31, 2006;

Our Current Reports on Form 8-K filed on May 17, 2005, May 24, 2005, June 9, 2005, June 14, 2005, June 22, 2005, August 2, 2005, August 8, 2005, September 1, 2005, September 7, 2005, September 9, 2005, October 19, 2005, December 1, 2005, January 3, 2006, January 6, 2006 and March 2, 2006;

Our Current Reports on Form 8-K/A filed on May 23, 2005 and September 7, 2005;

Our Registration Statement on Form 8-A 12G, filed on November 8, 1999, which contains a description of our common stock; and

Our Registration Statement on Form 8-A 12G, filed on September 27, 2002, which contains a description of our Series RP preferred stock issuable in connection with our stockholder rights plan.

All reports and other documents subsequently filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering contemplated hereby shall be deemed to be incorporated by reference in this prospectus and to be a part hereof from the respective dates of filing of those documents. Notwithstanding the foregoing, we are not incorporating any document or information deemed to have been furnished and not filed in accordance with SEC rules. For the purposes of this prospectus, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement.

You can obtain any of the documents described above from the SEC or through the SEC's web site at the address described above, or from our web site at [www.finisar.com](http://www.finisar.com). We will provide to any person, including any beneficial owner of our common stock, to whom a copy of this prospectus is delivered a copy of any of these documents without charge, excluding any exhibits unless the exhibit is specifically listed as an exhibit to the registration statement of which this prospectus is a part. You can obtain any of these documents from us by requesting them in writing or by telephone at the following address:

Finisar Corporation  
1389 Moffett Park Drive  
Sunnyvale, CA 94089  
Attn: Secretary  
(408) 548-1000

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**24,145,055 Shares**

**Common Stock**

**PROSPECTUS**

June 5, 2006

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**Table of Contents****PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****ITEM 14. *OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.***

The following table sets forth the fees and expenses in connection with the issuance and distribution of the securities being registered hereunder. Except for the SEC registration fee, all amounts are estimates.

SEC registration fee	\$ 11,704
Accounting fees and expenses	20,000
Legal fees and expenses	20,000
Printing and engraving expenses	5,000
Miscellaneous expenses	3,296
Total	\$ 60,000

**ITEM 15. *INDEMNIFICATION OF DIRECTORS AND OFFICERS.***

Section 145 of the Delaware General Corporation Law ( DGCL ) permits indemnification of officers, directors and other corporate agents under certain circumstances and subject to certain limitations. The Registrant s Certificate of Incorporation and Bylaws provide that the Registrant shall indemnify its directors, officers, employees and agents to the fullest extent permitted by the DGCL, including in circumstances in which indemnification is otherwise discretionary under such law. In addition, with the approval of the Board of Directors and the stockholders, the Registrant has entered into separate indemnification agreements with its directors, officers and certain employees which require the Registrant, among other things, to indemnify them against certain liabilities which may arise by reason of their status or service (other than liabilities arising from willful misconduct of a culpable nature) and to obtain directors and officers insurance, if available on reasonable terms.

These indemnification provisions may be sufficiently broad to permit indemnification of the Registrant s officers, directors and other corporate agents for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933.

The Registrant s Chief Executive Officer and Chairman of the Board, Senior Vice President Finance and Chief Financial Officer and its former Chief Technical Officer and a director have been named as defendants in the securities class action lawsuit described under the caption Risk Factors We are subject to pending legal proceedings in Part I of the registration statement. These officers and director are likely to assert a claim for indemnification in connection with that litigation. Other than the securities class action litigation, there is no pending litigation or proceeding involving a director, officer, employee or other agent of the Registrant in which indemnification is being sought nor is the Registrant aware of any threatened litigation that may result in a claim for indemnification by any director, officer, employee or other agent of the Registrant.

The Registrant has obtained liability insurance for the benefit of its directors and officers.

**ITEM 16. *EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.***

*Exhibits:*

<b>Exhibit Number</b>	<b>Description</b>
4.1	Specimen Common Stock Certificate(1)
5.1	Opinion of DLA Piper Rudnick Gray Cary US LLP
10.21	Amended and Restated Registration Rights Agreement dated January 25, 2005 by and between Finisar Corporation and Infineon Technologies AG(2)
23.1	Consent of DLA Piper Rudnick Gray Cary US LLP (contained in Exhibit 5.1)
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
24	Power of Attorney (incorporated by reference to the signature page of this Registration Statement)

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- (1) Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A filed October 19, 1999 (File No. 333-87017).
- (2) Incorporated by reference to Exhibit 10.21 to the Registrant's Current Report on Form 8-K filed January 28, 2005.

**ITEM 17. UNDERTAKINGS.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*provided, however*, that paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of

prospectus is first used after effectiveness or the date of the first contract of sale of 314 securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial

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bona fide offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(b) Insofar as indemnification by the registrant for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 15 of this registration statement or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933, and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Sunnyvale, State of California on June 5, 2006.

FINISAR CORPORATION

By: /s/ Jerry S. Rawls

Jerry S. Rawls  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Jerry S. Rawls and Stephen K. Workman, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-3, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

<b>Name</b>	<b>Title</b>	<b>Date</b>
/s/ Jerry S. Rawls	Chief Executive Officer	June 5, 2006
Jerry S. Rawls	(Principal Executive Officer) and Chairman of the Board of Directors	
/s/ Stephen K. Workman	Senior Vice President, Finance,	June 5, 2006
Stephen K. Workman	Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)	
/s/ Roger C. Ferguson	Director	June 5, 2006
Roger C. Ferguson		
/s/ David C. Fries	Director	June 5, 2006
David C. Fries		
/s/ Frank H. Levinson	Director	June 5, 2006
Frank H. Levinson		



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<b>Name</b>	<b>Title</b>	<b>Date</b>
/s/ Larry D. Mitchell Larry D. Mitchell	Director	June 5, 2006
/s/ Robert N. Stephens Robert N. Stephens	Director	June 5, 2006
/s/ Dominique Trempont Dominique Trempont	Director	June 5, 2006

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**INDEX TO EXHIBITS**

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