

FINISAR CORP
Form 8-K
July 01, 2008

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of report (date of earliest event reported):
July 1, 2008

Finisar Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

000-27999
(Commission File No.)

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

1389 Moffett Park Drive
Sunnyvale, CA 94089
(Address of principal executive offices)

Registrant's telephone number, including area code:
(408) 548-1000

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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- x Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01. Other Events.

On July 1, 2008, Optium Corporation (Optium) and Finisar Corporation (Finisar) issued a joint press release announcing that, in connection with the previously announced proposed combination of Optium and Finisar, early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the HSR Act) has been granted by the U.S. Federal Trade Commission, a copy of which is attached hereto as Exhibit 99.1.

Important Additional Information

In connection with the proposed combination of Finisar and Optium, Finisar plans to file with the Securities and Exchange Commission (the SEC) a Registration Statement on Form S-4 containing a Joint Proxy Statement/Prospectus and Optium plans to file with the SEC the same Joint Proxy Statement/Prospectus. The definitive Joint Proxy Statement/Prospectus will be mailed to the stockholders of Finisar and Optium after clearance with the SEC. Each company will also file with the SEC from time to time other documents relating to the proposed combination. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ CAREFULLY THE JOINT PROXY STATEMENT/PROSPECTUS WHEN IT IS FILED WITH THE SEC, AND OTHER DOCUMENTS FILED BY EITHER FINISAR OR OPTIUM WITH THE SEC RELATING TO THE PROPOSED COMBINATION WHEN THEY ARE FILED, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED COMBINATION.

Copies of the documents filed with the SEC by Finisar or Optium may be obtained free of charge from the SEC website maintained at www.sec.gov. In addition, Finisar's SEC filings may be obtained free of charge from Finisar's website (www.Finisar.com) or by calling Finisar's Investor Relations department at 408-542-5050 and Optium's filings may be obtained free of charge from Optium's website (www.Optium.com) or by calling Optium's Investor Relations department at 267-803-3801.

Each of Finisar and Optium, and its respective directors and executive officers, may be deemed to be participants in the solicitation of proxies from that company's respective stockholders in connection with the proposed combination. Information about the directors and executive officers of Finisar (including their respective ownership of Finisar shares) is contained in Finisar's annual meeting proxy statement filed with the SEC on February 21, 2008 and available free of charge in the manner described above. Information about the directors and executive officers of Optium (including their respective ownership of Optium shares) is contained in Optium's annual meeting proxy statement filed with the SEC on November 13, 2007 and available free of charge in the manner described above. Additional information regarding the interests of such participants in the proposed combination will be included in the Joint Proxy Statement/Prospectus and the other documents filed by each company with the SEC relating to the proposed combination (when filed).

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

| Exhibit No.: | Description |
|--------------|--|
| Exhibit 99.1 | Joint press release issued on July 1, 2008 by Finisar Corporation and Optium Corporation |

Forward-Looking Statements

This filing may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All forward-looking statements included in this filing are based on information available to Finisar and Optium as of the date of this filing and current expectations, forecasts and assumptions of each company. Forward-looking statements involve risks and uncertainties which could cause actual results to differ materially from those anticipated. In the case of the proposed combination of Finisar and Optium, these risks and uncertainties include the risk that the proposed combination may not close, including the risk that the requisite stockholder and regulatory approvals may not be obtained; potential changes in the expected timing of the filing of the Form S-4 Registration Statement; difficulties that may be encountered in integrating the combined businesses and realizing the potential synergies of the proposed combination; risks associated with the rapidly evolving markets for both companies' products, the historical dependence of each company on a limited number of customers, and fluctuations in the mix of products and customers in any period; the risks associated with ongoing new product development, and introduction of new and enhanced products; the challenges of rapid growth followed by periods of contraction; intensive competition; and the other risks and uncertainties faced by each company, as reported in their most recent respective Forms 10-K, Forms 10-Q and other filings with the SEC. No forward-looking statements in this filing or those filings should be relied upon as representing Finisar's or Optium's views or expectations as of any subsequent date and neither company undertakes any obligation to revise or update any such forward-looking statement to reflect events or circumstances that may arise after the statement was made.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: July 1, 2008

Finisar Corporation

By:

/s/ Stephen K. Workman
Stephen K. Workman
Senior Vice President, Finance, Chief
Financial Officer and Secretary