

FINISAR CORP  
Form SC TO-I/A  
July 16, 2009

Table of Contents

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE TO  
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
(Amendment No. 1)**

**FINISAR CORPORATION**  
(Name of Subject Company (Issuer) and Filing Person (Offeror))

**2<sup>1</sup>/<sub>2</sub>% Convertible Subordinated Notes due 2010  
2<sup>1</sup>/<sub>2</sub>% Convertible Senior Subordinated Notes due 2010**  
(Title of Class of Securities)

**31787AAF8  
31787AAG6 & 31787AAH4**  
(CUSIP Number of Class of Securities)

**JERRY S. RAWLS  
Chairman of the Board  
EITAN GERTEL  
Chief Executive Officer  
Finisar Corporation  
1389 Moffett Park Drive  
Sunnyvale, California 94089  
(408) 548-1000**

(Name, address and telephone numbers of person authorized  
to receive notices and communications on behalf of filing persons)

*With copies to:*

**STEPHEN K. WORKMAN  
Senior Vice President, Finance  
and  
Chief Financial Officer  
Finisar Corporation  
1389 Moffett Park Drive  
Sunnyvale, California 94089  
(408) 548-1000**

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

**JOHN A. FORE, ESQ.  
Wilson Sonsini Goodrich & Rosati  
  
Professional Corporation  
600 Page Mill Road  
Palo Alto, CA 94304  
(650) 493-9300**

**CALCULATION OF FILING FEE**

**Transaction Valuation\*  
\$95,000,000**

**Amount of Filing Fee\*\*  
\$5,301**

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\* The transaction value is estimated solely for purposes of calculating the filing fee. This amount is based on the purchase of an aggregate of \$95,000,000 principal amount of the outstanding 2<sup>1</sup>/<sub>2</sub>% Convertible Subordinated Notes due 2010 and 2<sup>1</sup>/<sub>2</sub>% Convertible Senior Subordinated Notes due 2010 (together, the Notes), at the maximum purchase price, as described herein.

\*\* Previously Paid.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$5,301

Filing Party: Finisar Corporation

Form or Registration No: Schedule TO

Date Filed: July 9, 2009

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which this statement relates:

third-party tender offer subject to Rule 14d-1

going-private transaction subject to Rule 13e-3

issuer tender offer subject to Rule 13e-4

amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer.

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Rule 14d-1(d) (Cross-Border Third Party Tender Offer)

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**TABLE OF CONTENTS**

Item 1. Summary Term Sheet

Item 4. Terms of the Transaction

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Item 7. Source and Amount of Funds or Other Consideration

Item 10. Financial Statements

Item 11. Additional Information

Item 12. Exhibits

**SIGNATURE**

Index to Exhibits

EX-99.(A)(1)(VI)

EX-99.(A)(1)(VII)

EX-99.(A)(1)(VIII)

EX-99.(A)(1)(IX)

EX-99.(A)(1)(X)

EX-99.(A)(5)(II)

EX-99.(B)(II)

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**Table of Contents**

**INTRODUCTORY STATEMENT**

This Amendment No. 1 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (the Schedule TO), originally filed with the Securities and Exchange Commission (the SEC) on July 9, 2009, by Finisar Corporation, a Delaware corporation (the Company). The Schedule TO relates to the offer by the Company to exchange, in separate concurrent exchange offers (each, an Exchange Offer and together, the Exchange Offers), shares of the Company's common stock, par value \$0.001 per share (Common Stock), and cash for an aggregate of up to \$37,500,000 principal amount of the Company's outstanding 2% Convertible Subordinated Notes due 2010 (the Sub Notes) and cash for an aggregate of up to \$57,500,000 principal amount of the Company's outstanding 2% Convertible Senior Subordinated Notes due 2010 (the Senior Sub Notes, and together with the Sub Notes, the Notes), upon the terms and subject to the conditions set forth in the Company's Amended and Restated Offer to Exchange, dated July 16, 2009, attached hereto as Exhibit (a)(1)(vi), and in the accompanying Amended and Restated Letter of Transmittal attached hereto as Exhibit (a)(1)(vii).

The Amended and Restated Offer to Exchange amends and restates in its entirety the Company's original Offer to Exchange dated July 9, 2009 in order to reflect:

the revision of the amount of the Exchange Consideration from a range of not greater than \$750 nor less than \$700 per \$1,000 principal amount of the Notes to a range of not greater than \$870 nor less than \$820 per \$1,000 principal amount of the Notes;

to revise the VWAP period used to determine the number of shares of Common Stock to be issued as Common Stock Consideration from the 8 trading day period from and including July 13, 2009 to and including July 22, 2009 to the 5 trading day period from and including July 16 to and including July 22, 2009;

the consummation of the sale of the assets of the Company's Network Tools Division pursuant to the agreement described in the original Offer to Exchange; and

the execution of definitive documentation formalizing the modifications which Silicon Valley Bank had committed to make to the Company's existing bank credit facilities, as described in the original Offer to Exchange, and the satisfaction of the related condition to the Company's obligation to consummate the Exchange Offers.

The Notice of Guaranteed Delivery, is amended and restated in its entirety by the Amended and Restated Notice of Guaranteed Delivery, attached hereto as Exhibit (a)(1)(viii). The Letter to Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees, is amended and restated in its entirety by the Amended and Restated Letter to Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees, attached hereto as Exhibit (a)(1)(ix). The Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees, is amended and restated in its entirety by the Amended and Restated Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees, attached hereto as Exhibit (a)(1)(x).

All information in the Amended and Restated Offer to Exchange is hereby expressly incorporated by reference to supplement Items 1 through 11 of the Schedule TO to the extent such Items incorporate by reference the information contained in the Amended and Restated Offer to Exchange, and as more particularly set forth below:

**Item 1. Summary Term Sheet.**

The information set forth under the caption Summary Term Sheet in the Amended and Restated Offer to Exchange is incorporated herein by reference.

**Item 4. Terms of the Transaction.**

(a) *Material Terms.* The information set forth under the captions Summary Term Sheet and The Exchange Offers Description of the Notes; Comparison of the Notes and the Common Stock; Description of Capital Stock, Terms of the Exchange Offers, Amendment; Extension; Waiver; Termination, Conditions of the Exchange Offers and U.S. Federal Income Tax Considerations in the Amended and Restated Offer to Exchange is incorporated herein by reference.

(b) *Purchases*. To the Knowledge of the Company, except as described below, the Company will not purchase any Notes from any of its executive officers, directors or affiliates. The information set forth under the caption *The Exchange Offers Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Notes* in the Amended and Restated Offer to Exchange is incorporated herein by reference.

**Item 5. Past Contacts, Transactions, Negotiations and Agreements**

(e) *Agreements Involving the Issuer's Securities*. The information set forth under the captions *The Exchange Offers Description of the Notes; Comparison of the Notes and the Common Stock; Description of Capital Stock* , *Interests of Directors and Executive Officers; Transaction and Arrangements Concerning the Notes* and *The Financial Advisor, Information Agent and Depositary* and the documents and information referred to under the caption *Incorporation of Documents by Reference* in the Amended and Restated Offer to Exchange is incorporated herein by reference. The Company has entered into the following agreements in connection with the Notes:

(1) Indenture, dated as of October 15, 2003, by and between the Company and U.S. Bank National Association, as Trustee, relating to the 21/2% Convertible Subordinated Notes due 2010 (incorporated by reference to Exhibit 4.4 to the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission ( SEC ) on December 10, 2003);

(2) Indenture, dated as of October 12, 2006, by and between the Company and U.S. Bank National Association, as Trustee, relating to the 21/2% Convertible Senior Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 4.1 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006);

(3) Registration Rights Agreement, dated October 15, 2003, between the Company and the initial purchasers of the Company's 21/2% Convertible Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.19 to the Company's quarterly report on Form 10-Q filed with the SEC on December 10, 2003);

(4) Registration Rights Agreement, dated October 12, 2006, between the Company and the initial purchasers of the Company's 21/2% Convertible Senior Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.37 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006); and

(5) Form of Exchange Agreements, dated October 6, 2006, by and between the Company and certain holders of the 21/2% Convertible Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.36 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).

**Item 7. Source and Amount of Funds or Other Consideration.**

(a) *Source of Funds*. The information set forth under the caption *The Exchange Offers Source and Amount of Exchange Consideration* in the Amended and Restated Offer to Exchange is incorporated herein by reference.

(b) *Conditions*. The information set forth under the captions *Summary Term Sheet* and *The Exchange Offers Conditions of the Exchange Offers* in the Amended and Restated Offer to Exchange is incorporated herein by reference.

(d) *Borrowed Funds*. The information set forth under the caption *The Exchange Offers Source and Amount of Exchange Consideration* and *The Exchange Offers Purpose of the Exchange Offers; Certain Information about the Company Recent Developments* in the Amended and Restated Offer to Exchange is incorporated herein by reference.

**Item 10. Financial Statements.**

(a) *Financial Information*.

(1) and (2) The information set forth under Item 8, Consolidated Financial Statements and Supplementary Data in the Company's annual report on Form 10-K for the fiscal year ended April 30, 2009, filed with the SEC on July 9, 2009, and in Item 8.01, Other Events in the Company's current report on Form 8-K, filed with the SEC on July 9, 2009, is incorporated herein by reference. The Company's annual report on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K may also be accessed electronically on the SEC's website at <http://www.sec.gov>.

(3) The following table sets forth information regarding the Company's ratio of earnings to fixed charges for each of the periods presented. Earnings available to cover fixed charges consist of income (loss) from continuing operations before provision for income taxes and cumulative effect of change in accounting principle plus fixed charges. Fixed charges consist of interest expense and that portion of rental payments under operating leases that is representative of the interest factor. Our earnings, as so defined, were insufficient to cover fixed charges in each of the fiscal years ended April 30, 2008 and 2009. Because of these deficiencies, the ratio information is not applicable for any of those periods. The extent to which earnings were insufficient to cover fixed charges for each of those periods is

shown below. Amounts shown are in millions.

	<b>Fiscal Year</b>	
	<b>Ended April 30,</b>	
	<b>2008</b>	<b>2009</b>
Ratio of earnings to fixed charges	N/A	N/A
Deficiency of earnings available to cover fixed charges	\$(72,325)	\$(261,770)

(4) The information set forth in the Amended and Restated Offer to Exchange under the caption Summary Term Sheet Book Value is incorporated herein by reference.

(b) *Pro Forma Information*. The information under the caption Unaudited Pro Forma Financial Data in the Amended and Restated Offer to Exchange is incorporated by reference herein.

**Item 11. Additional Information.**

(a) *Agreements, Regulatory Requirements and Legal Proceedings*. The information set forth under the caption The Exchange Offers Certain Legal Matters; Regulatory Approvals in the Amended and Restated Offer to Exchange is incorporated herein by reference.

(b) *Other Material Information*.

(1) The information set forth under the captions Risk Factors , The Exchange Offers Certain Significant Considerations , Conditions of the Exchange Offers , Certain U.S. Federal Income Tax Considerations and Securities Laws Considerations in the Amended and Restated Offer to Exchange is incorporated herein by reference.

(2) The documents and information referred to under the caption Incorporation of Documents by Reference in the Amended and Restated Offer to Exchange are incorporated herein by reference.

**Item 12. Exhibits.**

Exhibit No.	Description
(a)(1)(i)*	Offer to Exchange, dated July 9, 2009.
(a)(1)(ii)*	Letter of Transmittal (including Substitute Form W-9 and Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).
(a)(1)(iii)*	Notice of Guaranteed Delivery.
(a)(1)(iv)*	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees.

**Table of Contents**

Exhibit No.	Description
(a)(1)(v)*	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees.
(a)(1)(vi)	Amended and Restated Offer to Exchange, dated July 16, 2009.
(a)(1)(vii)	Amended and Restated Letter of Transmittal (including Substitute Form W-9 and Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).
(a)(1)(viii)	Amended and Restated Notice of Guaranteed Delivery.
(a)(1)(ix)	Amended and Restated Letter to Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees.
(a)(1)(x)	Amended and Restated Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees.
(a)(5)(i)*	Press Release, dated July 9, 2009.
(a)(5)(ii)	Press Release, dated July 16, 2009.
(b)(i)*	Letter from Silicon Valley Bank, dated July 8, 2009.
(b)(ii)	Fourth Loan Modification Agreement dated as of July 15, 2009 by and between Silicon Valley Bank and Finisar Corporation.
(d)(i)*	Indenture, dated as of October 15, 2003, by and between the Company and U.S. Bank National Association, as Trustee, relating to the 2 <sup>1</sup> / <sub>2</sub> % Convertible Subordinated Notes due 2010 (incorporated by reference to Exhibit 4.4 to the Company's Quarterly Report on Form 10-Q filed with the SEC on December 10, 2003).
(d)(ii)*	Indenture, dated as of October 12, 2006, by and between the Company and U.S. Bank National Association, as Trustee, relating to the 2 <sup>1</sup> / <sub>2</sub> % Convertible Senior Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 4.1 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).
(d)(iii)*	Registration Rights Agreement, dated October 15, 2003, between the Company and the initial purchasers of the Company's 2 <sup>1</sup> / <sub>2</sub> % Convertible Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.19 to the Company's quarterly report on Form 10-Q filed with the SEC on December 10, 2003).
(d)(iv)*	Registration Rights Agreement, dated October 12, 2006, between the Company and the initial purchasers of the Company's 2 <sup>1</sup> / <sub>2</sub> % Convertible Senior Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.37 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).
(d)(v)*	Form of Exchange Agreements, dated October 6, 2006, by and between the Company and certain holders relating to the 2 <sup>1</sup> / <sub>2</sub> % Convertible Subordinated Notes due 2010 (incorporated herein by



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reference to Exhibit 10.36 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).

- \* Previously filed with the Schedule TO.
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**Table of Contents**

**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

FINISAR CORPORATION

By: /s/ Jerry S. Rawls

Name: Jerry S. Rawls

Title: Chairman of the Board

Dated: July 16, 2009

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**Table of Contents**

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(d)(ii)*	Indenture, dated as of October 12, 2006, by and between the Company and U.S. Bank National Association, as Trustee, relating to the 2 <sup>1</sup> / <sub>2</sub> % Convertible Senior Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 4.1 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).
(d)(iii)*	Registration Rights Agreement, dated October 15, 2003, between the Company and the initial purchasers of the Company's 2% Convertible Subordinated Notes due 2010 (incorporated herein by

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reference to Exhibit 10.19 to the Company's quarterly report on Form 10-Q filed with the SEC on December 10, 2003).

- (d)(iv)\* Registration Rights Agreement, dated October 12, 2006, between the Company and the initial purchasers of the Company's 22% Convertible Senior Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.37 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).
- (d)(v)\* Form of Exchange Agreements, dated October 6, 2006, by and between the Company and certain holders relating to the 2<sup>1</sup>/<sub>2</sub>% Convertible Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 10.36 to the Company's current report on Form 8-K filed with the SEC on October 17, 2006).

\* Previously filed  
with the  
Schedule TO.