

FINISAR CORP
Form 8-K
May 17, 2005

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**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):
May 12, 2005

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.)

**1308 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):

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

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Item 2.01 Completion of Acquisition or Disposition of Assets.

On May 12, 2005, Finisar Corporation (Finisar) completed the acquisition of InterSAN, Inc. (InterSAN), a privately held company located in Scotts Valley, California, pursuant to an Agreement and Plan of Reorganization dated March 2, 2005 (the Agreement) which was announced on March 7, 2005. Under the terms of the Agreement, InterSAN merged with a wholly-owned subsidiary of Finisar and the holders of InterSAN s securities will be entitled to receive up to 7,132,186 shares of Finisar common stock having a value of approximately \$8.8 million. Approximately ten percent (10%) of the shares of Finisar common stock that would otherwise be distributed to the holders of InterSAN s securities at the closing of the acquisition were deposited into an escrow account for twelve (12) months following the closing for the purpose of providing a fund against which Finisar may assert claims for damages, if any, based on breaches of the representations and warranties made by InterSAN in the Agreement. The transaction will be accounted for as a purchase and is intended to qualify as a tax-free reorganization. The description of the acquisition set forth herein is qualified in its entirety by reference to terms of the Agreement, which was filed as Exhibit 10.26 to Finisar s Form 8-K Report dated March 2, 2005.

Item 3.02 Unregistered Sales of Equity Securities

Pursuant to the Agreement described in Item 2.01 above, Finisar will issue up to 7,132,186 shares of common stock to the former security holders of InterSAN. The issuance of such shares has not been registered under the Securities Act of 1933, as amended (the Act), in reliance on the exemption from registration provided by Section 3(a)(10) of the Act.

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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: May 17, 2005

Finisar Corporation

By: /s/ Stephen K. Workman

Stephen K. Workman

Senior Vice President, Finance, Chief

Financial Officer and Secretary