

FINISAR CORP
Form 8-K
January 10, 2007

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): January 4, 2007
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):

- 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 8.01 Other Events.

On January 4, 2007, Finisar Corporation (the "Company") received a purported notice of default (the "Notice") from U.S. Bank Trust National Association, as trustee (the "Trustee") for the Company's 2 1/2% Convertible Senior Subordinated Notes due 2010 (the "Notes"). The Notice asserted that the Company's failure to timely file its Form 10-Q for the quarter ended October 29, 2006 with the Securities and Exchange Commission (the "SEC") constituted a default under the Indenture, dated as of October 12, 2006 (the "Indenture"), between the Company and the Trustee governing the Notes. The Notice indicated that if the Company does not cure this purported default within 60 days, an "Event of Default" would occur under the Indenture. The Company believes that it is not in default under the terms of the Indenture. As previously announced, the Company has delayed filing its Form 10-Q for the quarter ended October 29, 2006 pending the completion of a review of its historical stock option grant practices being conducted by the Audit Committee of its Board of Directors. The Company plans to file its Form 10-Q as soon as practicable following the conclusion of the review.

The Notice states that the Indenture requires the Company to file with the SEC, and provide copies to the Trustee within 15 days after such filing, its annual and quarterly reports, information, documents and other reports which the Company is required to file with the SEC pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). In fact, Section 4.02 of the Indenture states that: (a) The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the Commission, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. Thus, Section 4.02 of the Indenture only requires the Company to file with the Trustee reports that have been filed with the SEC, and, since the Company's Form 10-Q for the quarter ended October 29, 2006 has not been filed with the SEC, the Company is under no obligation to file it with the Trustee. Therefore, the Company is not in breach of Section 4.02 of the Indenture.

Furthermore, even if Section 4.02 of the Indenture requires the Company to file a Form 10-Q for the quarter ended October 29, 2006 with the Trustee within 15 days of the time such filing is required to be filed with the SEC, the Company would have 60 days from receiving notice of an actual default before such failure to file would ripen into an "Event of Default." Thus, because the Company did not receive the Notice until January 4, 2007, the Company would have until March 5, 2007 to file its Form 10-Q for the quarter ended October 29, 2006 with the Trustee.

If an "Event of Default" were to occur under the Indenture, the Trustee or holders of at least 25% in aggregate principal amount of the Notes then outstanding would have the contractual right to declare all unpaid principal, and any accrued, default or additional interest, on the Notes then outstanding to be due and payable. As of the date hereof, there is \$100.0 million in aggregate principal amount of the Notes outstanding and no accrued but unpaid interest. If an "Event of Default" were to occur, the noteholders would have a right to receive the \$100.0 million in aggregate principal amount outstanding plus any additional interest or default interest (which would accrue at a rate of 2 1/2% per annum from the date on which full payment of the Notes was due to the date that full payment is made) which may have accrued.

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: January 10, 2007

Finisar Corporation

By: /s/ Stephen K. Workman

Stephen K. Workman

**Senior Vice President, Finance and
Chief**

Financial Officer