

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-Q

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the Quarterly Period Ended January 26, 2014
or
 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from **to**

Commission file number 000-27999

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
(Address of principal executive offices)

94089
(Zip Code)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

At February 28, 2014, there were 96,767,546 shares of the registrant's common stock, \$.001 par value, issued and outstanding.

INDEX TO QUARTERLY REPORT ON FORM 10-Q
For the Quarter Ended January 26, 2014

	<u>Page</u>
<u>PART I FINANCIAL INFORMATION</u>	
<u>Item 1. Financial Statements:</u>	
<u>Condensed Consolidated Balance Sheets as of January 26, 2014 and April 28, 2013</u>	<u>4</u>
<u>Condensed Consolidated Statements of Operations for the three and nine month periods ended January 26, 2014 and January 27, 2013</u>	<u>5</u>
<u>Condensed Consolidated Statements of Comprehensive Income (Loss) for the three and nine month periods ended January 26, 2014 and January 27, 2013</u>	<u>6</u>
<u>Condensed Consolidated Statements of Cash Flows for the nine month periods ended January 26, 2014 and January 27, 2013</u>	<u>7</u>
<u>Notes to Condensed Consolidated Financial Statements</u>	<u>8</u>
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>19</u>
<u>Item 3. Quantitative and Qualitative Disclosure About Market Risk</u>	<u>24</u>
<u>Item 4. Controls and Procedures</u>	<u>24</u>
<u>PART II OTHER INFORMATION</u>	<u>26</u>
<u>Item 1. Legal Proceedings</u>	<u>26</u>
<u>Item 1A. Risk Factors</u>	<u>26</u>
<u>Item 6. Exhibits</u>	<u>37</u>
<u>Signatures</u>	<u>38</u>

FORWARD LOOKING STATEMENTS

This report contains 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, and, consequently, actual results may materially differ from those projected by any forward-looking statements. As a result, you should not place undue reliance on these forward-looking statements since they may not occur.

Certain factors that could cause actual results to differ from those projected are discussed in “Part II. Other Information, Item 1A. Risk Factors.” We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information or future events.

PART I - FINANCIAL INFORMATION

Item 1. *Financial Statements*

FINISAR CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	January 26, 2014 (Unaudited)	April 28, 2013
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 374,902	\$ 289,076
Short-term investments	179,847	—
Accounts receivable, net of allowance for doubtful accounts of \$868 at January 26, 2014 and \$958 at April 28, 2013	195,442	149,612
Accounts receivable, other	24,274	16,538
Inventories	247,126	200,670
Deferred tax assets	27	1,224
Prepaid expenses	22,737	17,178
Total current assets	1,044,355	674,298
Property, equipment and improvements, net	247,394	201,442
Purchased intangible assets, net	10,523	14,893
Other intangible assets, net	11,453	15,564
Goodwill	90,986	90,986
Minority investments	2,041	884
Other assets	21,034	9,780
Total assets	<u>\$ 1,427,786</u>	<u>\$ 1,007,847</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 96,723	\$ 77,630
Accrued compensation	46,402	31,492
Other accrued liabilities	26,370	23,533
Deferred revenue	15,620	9,182
Short-term debt	4,230	—
Current portion of convertible debt	40,015	—
Total current liabilities	229,360	141,837
Long-term liabilities:		
Convertible debt, net of current portion	210,029	40,015
Other non-current liabilities	11,680	13,480
Total liabilities	451,069	195,332
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized, no shares issued and outstanding at January 26, 2014 and April 28, 2013	—	—
Common stock, \$0.001 par value, 750,000,000 shares authorized, 96,721,272 shares and 93,778,620 shares issued and outstanding at January 26, 2014 and April 28, 2013, respectively	97	94
Additional paid-in capital	2,440,849	2,350,146
Accumulated other comprehensive income	18,980	28,525
Accumulated deficit	(1,488,923)	(1,571,960)
Finisar Corporation stockholders' equity	971,003	806,805
Non-controlling interest	5,714	5,710
Total stockholders' equity	976,717	812,515
Total liabilities and stockholders' equity	<u>\$ 1,427,786</u>	<u>\$ 1,007,847</u>

See accompanying notes.

FINISAR CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited, in thousands, except per share data)

	Three Months Ended		Nine Months Ended	
	January 26, 2014	January 27, 2013	January 26, 2014	January 27, 2013
Revenues	\$ 294,018	\$ 238,351	\$ 850,808	\$ 690,918
Cost of revenues	187,368	168,377	546,638	496,001
Amortization of acquired developed technology	961	1,930	3,735	5,202
Gross profit	105,689	68,044	300,435	189,715
Operating expenses:				
Research and development	46,734	39,725	135,223	117,514
Sales and marketing	10,911	10,398	35,038	31,291
General and administrative	14,353	12,797	38,081	39,058
Amortization of purchased intangibles	595	1,035	1,785	2,906
Impairment of long-lived assets	—	4,886	—	4,886
Total operating expenses	72,593	68,841	210,127	195,655
Income (loss) from operations	33,096	(797)	90,308	(5,940)
Interest income	335	186	834	544
Interest expense	(1,663)	(648)	(2,582)	(2,045)
Other income (expense), net	(1,873)	(275)	(890)	(295)
Income (loss) before income taxes and non-controlling interest	29,895	(1,534)	87,670	(7,736)
Provision for income taxes	2,827	2,153	4,816	1,733
Consolidated net income (loss)	27,068	(3,687)	82,854	(9,469)
Adjust for net (income) loss attributable to non-controlling interest	(7)	280	183	136
Net income (loss) attributable to Finisar Corporation	\$ 27,061	\$ (3,407)	\$ 83,037	\$ (9,333)
Net income (loss) per share attributable to Finisar Corporation common stockholders:				
Basic	\$ 0.28	\$ (0.04)	\$ 0.87	\$ (0.10)
Diluted	\$ 0.26	\$ (0.04)	\$ 0.82	\$ (0.10)
Shares used in computing net income (loss) per share:				
Basic	96,394	93,097	95,649	92,624
Diluted	104,361	93,097	103,491	92,624

See accompanying notes.

FINISAR CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited, in thousands)

	Three Months Ended		Nine Months Ended	
	January 26, 2014	January 27, 2013	January 26, 2014	January 27, 2013
Consolidated net income (loss)	\$ 27,068	\$ (3,687)	\$ 82,854	\$ (9,469)
Other comprehensive income (loss), net of tax:				
Change in cumulative foreign currency translation adjustment	(8,336)	558	(9,545)	(1,816)
Total other comprehensive income (loss), net of tax	(8,336)	558	(9,545)	(1,816)
Total consolidated comprehensive income (loss)	18,732	(3,129)	73,309	(11,285)
Adjust for comprehensive (income) loss attributable to non-controlling interest, net of tax	(7)	280	183	136
Comprehensive income (loss) attributable to Finisar Corporation	<u>\$ 18,725</u>	<u>\$ (2,849)</u>	<u>\$ 73,492</u>	<u>\$ (11,149)</u>

See accompanying notes.

FINISAR CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited, in thousands)

	Nine Months Ended	
	January 26, 2014	January 27, 2013
Operating activities		
Consolidated net income (loss)	\$ 82,854	\$ (9,469)
Adjustments to reconcile consolidated net income (loss) to net cash provided by operating activities:		
Depreciation	44,551	39,112
Amortization	5,878	8,667
Stock-based compensation expense	29,437	26,048
(Gain) loss on sale or retirement of assets and asset disposal group	(128)	25
Impairment of long-lived assets	—	4,886
Equity in earnings of equity method investment	(509)	—
Amortization of discount on 0.50% Convertible Senior Notes due 2033	927	—
Changes in operating assets and liabilities:		
Accounts receivable	(47,905)	15,561
Inventories	(55,544)	18,465
Other assets	(16,727)	4,259
Deferred income taxes	1,197	1,249
Accounts payable	20,214	(7,845)
Accrued compensation	13,137	(1,732)
Other accrued liabilities	2,573	2,935
Deferred revenue	4,959	(689)
Net cash provided by operating activities	<u>84,914</u>	<u>101,472</u>
Investing activities		
Additions to property, equipment and improvements	(93,028)	(65,281)
Sale of minority investment	—	10,495
Net proceeds from sale of property and equipment and asset disposal group	457	194
Acquisitions, net of cash acquired	—	(20,580)
Purchases of short-term investments	(179,847)	—
Purchase of intangible assets	—	(201)
Net cash used in investing activities	<u>(272,418)</u>	<u>(75,373)</u>
Financing activities		
Repayments of debt	—	(3,150)
Proceeds from issuance of 0.50% Convertible Senior Notes due 2033, net of issuance costs	255,000	—
Proceeds from a bank loan	4,230	—
Proceeds from the issuance of shares under equity plans and employee stock purchase plan	14,100	7,961
Net cash provided by financing activities	<u>273,330</u>	<u>4,811</u>
Net increase in cash and cash equivalents	85,826	30,910
Cash and cash equivalents at beginning of period	289,076	234,544
Cash and cash equivalents at end of period	<u>\$ 374,902</u>	<u>\$ 265,454</u>
Supplemental disclosure of cash flow information		
Cash paid for interest	\$ 1,067	\$ 1,011
Cash paid for taxes	\$ 3,276	\$ 1,733

See accompanying notes.

FINISAR CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements as of January 26, 2014 and for the three and nine month periods ended January 26, 2014 and January 27, 2013 have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") for interim financial statements and pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"), and include the accounts of Finisar Corporation and its controlled subsidiaries (collectively, "Finisar" or the "Company"). Non-controlling interest represents the minority shareholders' proportionate share of the net assets and results of operations of the Company's majority-owned subsidiary. Intercompany accounts and transactions have been eliminated in consolidation. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with U.S. GAAP and pursuant to the rules and regulations of the SEC have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the unaudited condensed consolidated financial statements reflect all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of the Company's financial position as of January 26, 2014, its operating results for the three and nine month periods ended January 26, 2014 and January 27, 2013, and its cash flows for the nine month periods ended January 26, 2014 and January 27, 2013. Operating results for the three and nine month periods ended January 26, 2014 are not necessarily indicative of the results that may be expected for the fiscal year ending April 27, 2014. The condensed consolidated balance sheet as of April 28, 2013 has been derived from the audited consolidated financial statements as of that date but does not include all the footnotes required by U.S. GAAP for complete financial statements. These unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the fiscal year ended April 28, 2013.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from these estimates.

Segments

The Company has one reportable segment consisting of optical subsystems and components.

2. Summary of Significant Accounting Policies

For a description of significant accounting policies, see Note 2, Summary of Significant Accounting Policies, to the consolidated financial statements included in the Company's annual report on Form 10-K for the fiscal year ended April 28, 2013. There have been no material changes to the Company's significant accounting policies since the filing of the annual report on Form 10-K.

Pending Adoption of New Accounting Standards

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB") or other standards setting bodies that are adopted by the Company as of the specified effective date. The Company believes the impact of recently issued standards that are not yet effective will not have a material impact on its consolidated financial position, results of operations and cash flows upon adoption.

3. Acquisition of Red-C Optical Networks, Inc.

During the first quarter of fiscal 2013, the Company completed the acquisition of Red-C Optical Networks, Inc., ("Red-C"), a Delaware corporation, with subsidiary operations in Tel Aviv, Israel, engaged in research, development and marketing of optical amplifiers and subsystems for the wavelength division multiplexing, or WDM, sector of the optical communication market. For additional information regarding this acquisition, see Note 4, Acquisitions, to the consolidated financial statements included in the Company's annual report on Form 10-K for the fiscal year ended April 28, 2013.

[Table of Contents](#)

4. Net Income (Loss) per Share

Basic net income (loss) per share has been computed using the weighted-average number of shares of common stock outstanding during the period. Diluted net income (loss) per share has been computed using the weighted-average number of shares of common stock and dilutive potential common shares from stock options and restricted stock units (under the treasury stock method), 5.0% Convertible Senior Notes due 2029 (on an as-if-converted basis), and 0.50% Convertible Senior Notes due 2033 (under the treasury stock method) outstanding during the period.

The following table presents the calculation of basic and diluted net income (loss) per share:

<i>(in thousands, except per share amounts)</i>	Three Months Ended		Nine Months Ended	
	January 26, 2014	January 27, 2013	January 26, 2014	January 27, 2013
Numerator:				
Net income (loss) attributable to Finisar Corporation	\$ 27,061	\$ (3,407)	\$ 83,037	\$ (9,333)
Numerator for basic net income (loss) per share	27,061	(3,407)	83,037	(9,333)
Effect of dilutive securities:				
Interest expense on 5.0% Convertible Senior Notes due 2029	539	—	1,617	—
Numerator for diluted net income (loss) per share	\$ 27,600	\$ (3,407)	\$ 84,654	\$ (9,333)
Denominator:				
Denominator for basic net income (loss) per share - weighted average shares	96,394	93,097	95,649	92,624
Effect of dilutive securities:				
Stock options and restricted stock units	4,219	—	4,094	—
5.0% Convertible Senior Notes due 2029	3,748	—	3,748	—
Dilutive potential common shares	7,967	—	7,842	—
Denominator for diluted net income (loss) per share	104,361	93,097	103,491	92,624
Net income (loss) per share attributable to Finisar Corporation common stockholders:				
Basic	\$ 0.28	\$ (0.04)	\$ 0.87	\$ (0.10)
Diluted	\$ 0.26	\$ (0.04)	\$ 0.82	\$ (0.10)

The following table presents common shares related to potentially dilutive securities excluded from the calculation of diluted net income (loss) per share as their effect would have been anti-dilutive:

<i>(in thousands)</i>	Three Months Ended		Nine Months Ended	
	January 26, 2014	January 27, 2013	January 26, 2014	January 27, 2013
Stock options and restricted stock units	664	4,215	1,073	4,597
Conversion of 5.0% Convertible Senior Notes due 2029	—	3,748	—	3,748
Conversion of 0.50% Convertible Senior Notes due 2033 ⁽¹⁾	—	—	—	—
	664	7,963	1,073	8,345

(1) 0.50% Convertible Senior Notes due 2033 were excluded from the calculation of diluted earnings per share under the treasury stock method since the conversion price exceeded the average market price for the Company's common stock.

5. Inventories

Inventories consist of the following as of January 26, 2014 and April 28, 2013:

<i>(in thousands)</i>	January 26, 2014	April 28, 2013
Raw materials	\$ 47,624	\$ 44,705
Work-in-process	118,993	95,937
Finished goods	80,509	60,028
Total inventories	\$ 247,126	\$ 200,670

6. Property, Equipment and Improvements

Property, equipment and improvements consist of the following as of January 26, 2014 and April 28, 2013:

<i>(in thousands)</i>	January 26, 2014	April 28, 2013
Land and buildings	\$ 46,134	\$ 29,834
Computer equipment	51,328	54,868
Office equipment, furniture and fixtures	4,420	5,373
Machinery and equipment	399,873	352,032
Leasehold property and improvements	35,088	32,665
Total	536,843	474,772
Accumulated depreciation and amortization	(289,449)	(273,330)
Property, equipment and improvements (net)	<u>\$ 247,394</u>	<u>\$ 201,442</u>

7. Intangible Assets

The following table reflects intangible assets subject to amortization as of January 26, 2014 and April 28, 2013:

<i>(in thousands)</i>	January 26, 2014		
	Gross Carrying	Accumulated	Net Carrying
	Amount	Amortization	Amount
Purchased technology	\$ 101,044	\$ (90,521)	\$ 10,523
Purchased trade name	1,172	(1,172)	—
Purchased customer relationships	26,944	(18,002)	8,942
Purchased internal use software, backlog and in-process research and development	3,396	(2,164)	1,232
Purchased patents	1,872	(593)	1,279
Total	<u>\$ 134,428</u>	<u>\$ (112,452)</u>	<u>\$ 21,976</u>

<i>(in thousands)</i>	April 28, 2013		
	Gross Carrying	Accumulated	Net Carrying
	Amount	Amortization	Amount
Purchased technology	\$ 101,044	\$ (86,786)	\$ 14,258
Purchased trade name	2,072	(2,072)	—
Purchased customer relationships	31,602	(21,120)	10,482
Purchased internal use software, backlog and in-process research and development	3,396	(1,920)	1,476
Purchased patents	1,872	(429)	1,443
Total	<u>\$ 139,986</u>	<u>\$ (112,327)</u>	<u>\$ 27,659</u>

Estimated remaining amortization expense for the next five fiscal years and thereafter is as follows (in thousands):

Year	Amount
2014 (remainder of year)	\$ 1,610
2015	6,356
2016	6,092
2017	4,065
2018	2,149
2019 and beyond	1,704
Total	<u>\$ 21,976</u>

8. Debt

0.50% Convertible Senior Notes Due 2033

In December 2013, the Company issued and sold \$258.8 million in aggregate principal amount of 0.50% Convertible Senior Notes due 2033 (the "2033 Notes") at par. The terms of the notes are governed by an indenture by and between the Company and Wells Fargo Bank, National Association, as Trustee. The notes will mature on December 15, 2033, unless earlier repurchased, redeemed or converted. The notes are senior unsecured and unsubordinated obligations of the Company, and are effectively subordinated to the Company's secured indebtedness and the indebtedness and other liabilities of the Company's subsidiaries. The notes bear interest at a rate of 0.5% per year, payable semi-annually in arrears on June 15 and December 15 each year.

Holders of the notes may convert their notes at their option prior to the close of business on the business day immediately preceding June 15, 2033 only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending on January 26, 2014 (and only during such fiscal quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period ("measurement period"), in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the applicable conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events. On or after June 15, 2033 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their notes at any time, regardless of whether any of the foregoing circumstances have occurred. The conversion rate will initially equal 33.1301 shares of common stock per \$1,000 principal amount of notes (which is equivalent to an initial conversion price of approximately \$30.18 per share of common stock), subject to adjustment. Upon conversion of a note, the Company will pay or deliver, as the case may be, either cash, shares of its common stock or a combination of cash and shares of its common stock, at the Company's election, as provided in the indenture. If holders elect to convert their notes in connection with a "fundamental change" (as defined in the indenture) that occurs on or before December 22, 2018, the Company will, to the extent provided in the indenture, increase the conversion rate applicable to such notes ("make-whole feature").

Holders will have the option to require the Company to redeem for cash any notes held by them in the event of a fundamental change at a purchase price equal to 100% of the principal amount of the notes plus accrued and unpaid interest to, but excluding, the redemption date. Holders also have the option to require the Company to redeem for cash any notes held by them on December 15, 2018, December 15, 2023 and December 15, 2028 at a redemption price equal to 100% of the principal amount of the notes plus accrued and unpaid interest to, but excluding, the redemption date. The Company may redeem the notes in whole or in part at any time on or after December 22, 2018 at 100% of the principal amount, plus accrued and unpaid interest to, but excluding, the redemption date.

The Company considered the features embedded in the notes, that is, the conversion feature, the holders' put feature, the Company's call feature, and the make-whole feature, and concluded that they are not required to be bifurcated and accounted for separately from the host debt instrument.

Because of its option to settle conversion of the notes in cash, the Company separated the liability and equity components of the notes. The carrying amount of the liability component at issuance date of \$209.1 million was calculated by estimating the fair value of similar liabilities without a conversion feature. The residual principal amount of the notes of \$49.6 million was allocated to the equity component. The resulting debt discount is amortized as interest expense. As of January 26, 2014, the remaining debt discount amortization period was 58 months.

The notes consisted of the following:

<i>(in thousands)</i>	As of January 26, 2014
Liability component:	
Principal	\$ 258,750
Unamortized debt discount	(48,721)
Net carrying amount of the liability component	\$ 210,029
Carrying amount of the equity component	\$ 49,648

[Table of Contents](#)

The Company incurred approximately \$3.8 million in transaction costs in connection with the issuance of the notes. These costs were allocated to the liability and equity components in proportion to the allocation of proceeds. Transaction costs of \$3.1 million, allocated to the liability component, were recognized as a non-current asset and are amortized. Transaction costs of \$725,000, allocated to the equity component, were recognized as a reduction of additional paid-in capital.

The following table sets forth interest expense information related to the notes:

<i>(in thousands, except percentages)</i>	Three and Nine Months Ended	
	January 26, 2014	
Contractual interest expense	\$	135
Amortization of the debt discount		927
Amortization of issuance costs		24
Total interest cost	\$	1,086
Effective interest rate on the liability component		4.87%

The Company applies the treasury stock method to determine the potential dilutive effect of the 2033 Notes on net income per share as a result of the Company's intent and stated policy to settle the principal amount of the Notes in cash.

Korean Bank Loan

During the second quarter of fiscal 2014, the Company's Korean subsidiary entered into a loan agreement with a Korean bank. Under this agreement, the subsidiary borrowed a total of \$4.2 million at an interest rate of 4.17% per annum. The interest is payable monthly and the principal is payable in September 2014. The loan is secured by the subsidiary's fixed assets.

5.0% Convertible Senior Notes Due 2029

The terms of the Company's 5.0% Convertible Senior Notes due 2029 (the "2029 Notes") include a provision that allows the holders to require the Company to redeem, for cash, any of their notes on October 15, 2014 at a redemption price equal to 100% of the principal amount of the notes being redeemed, plus accrued and unpaid interest up to, but excluding, the redemption date. Accordingly, all \$40.0 million of the 2029 Notes principal amount outstanding as of January 26, 2014 was classified as a current liability as of that date.

9. Investments

Fixed Income Securities

The Company's portfolio of fixed income securities consists of commercial paper notes and term bank certificates of deposit. All of the Company's investments in fixed income securities have original maturity (maturity at the purchase date) of less than 12 months. Investments with original maturities of three months or less are classified as cash equivalents. All of the Company's investments in fixed income securities are classified as held-to-maturity since the Company has the positive intent and ability to hold these investments until maturity. These investments are carried at amortized cost.

The Company's investments in fixed income securities as of January 26, 2014 and April 28, 2013 were as follows:

<i>(in thousands)</i>	January 26, 2014				April 28, 2013			
	Amortized Cost	Gross Unrealized		Fair Value	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses			Gains	Losses	
Commercial paper	\$ 119,835	\$ —	\$ —	\$ 119,835	\$ —	\$ —	\$ —	\$ —
Certificates of deposit	120,000	—	—	120,000	—	—	—	—
Total	\$ 239,835	\$ —	\$ —	\$ 239,835	\$ —	\$ —	\$ —	\$ —
Reported as:								
Cash equivalents	\$ 59,988	\$ —	\$ —	\$ 59,988	\$ —	\$ —	\$ —	\$ —
Short-term investments	179,847	—	—	179,847	—	—	—	—
Total	\$ 239,835	\$ —	\$ —	\$ 239,835	\$ —	\$ —	\$ —	\$ —

[Table of Contents](#)

The Company monitors its investment portfolio for impairment on a periodic basis. In order to determine whether a decline in fair value is other-than-temporary, the Company evaluates, among other factors: the duration and extent to which the fair value has been less than the carrying value; the Company's financial condition and business outlook, including key operational and cash flow metrics, current market conditions and future trends in its industry; the Company's relative competitive position within the industry; and the Company's intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery in fair value. A decline in the fair value of the security below amortized cost that is deemed other-than-temporary is charged to earnings, resulting in the establishment of a new cost basis for the affected securities. During the three and nine month periods ended January 26, 2014 and January 27, 2013 there were no realized gains or losses, and the Company did not recognize any other-than-temporary impairments.

Minority Investments

Included in minority investments at both January 26, 2014 and April 28, 2013 is \$884,000 representing the carrying value of the Company's minority investment in one privately held company accounted for under the cost method. Additionally, included in minority investments is \$1,157,000 and \$0 at January 26, 2014 and April 28, 2013, respectively, representing the carrying value of the Company's minority investment in one privately held company accounted for under the equity method. At January 26, 2014, the Company had a 19.9% ownership interest in this company. For the three and nine month periods ended January 26, 2014, the Company recorded income of \$200,000 and \$509,000, respectively, representing its share of the net income of this minority investee, which was included in other income (expense), net in the accompanying condensed consolidated statements of operations.

10. Warranty

The Company generally offers a one-year limited warranty for its products. The specific terms and conditions of these warranties vary depending upon the product sold. The Company estimates the costs that may be incurred under its basic limited warranty and records a liability for the amount of such costs at the time revenue is recognized. Factors that affect the Company's warranty liability include the historical and anticipated rates of warranty claims and cost to repair. The Company periodically assesses the adequacy of its recorded warranty liabilities and adjusts the amounts as necessary.

Changes in the Company's warranty liability during the following period were as follows:

<i>(in thousands)</i>	Nine Months Ended January 26, 2014	
Beginning balance at April 28, 2013	\$	4,155
Additions during the period based on product sold		4,618
Change in estimate		(1,699)
Settlements and expirations		(1,875)
Ending balance at January 26, 2014	\$	5,199

11. Fair Value of Financial Instruments

The Company's financial instruments measured at fair value on a recurring basis as of January 26, 2014 and April 28, 2013 were as follows:

<i>(in thousands)</i>	January 26, 2014					April 28, 2013				
	Carrying	Fair Value				Carrying	Fair Value			
	Amount	Level 1	Level 2	Level 3	Total	Amount	Level 1	Level 2	Level 3	Total
Money market funds	\$ 15,324	\$ 15,324	\$ —	\$ —	\$ 15,324	\$ —	\$ —	\$ —	\$ —	\$ —
Commercial paper	119,835	—	119,835	—	119,835	—	—	—	—	—
Certificates of deposit	120,000	—	120,000	—	120,000	—	—	—	—	—
Total	\$ 255,159	\$ 15,324	\$ 239,835	\$ —	\$ 255,159	\$ —	\$ —	\$ —	\$ —	\$ —

The Company's Level 2 financial instruments in the table above are valued using quoted market prices for similar instruments or non-binding market prices that are corroborated by observable market data.

[Table of Contents](#)

The Company has not estimated the fair value of its minority investments in two privately held companies as it is not practicable to estimate the fair value of these investments because of the lack of quoted market prices and the inability to estimate fair value without incurring excessive costs. As of January 26, 2014, the carrying value of the Company's minority investments in these privately held companies was \$2.0 million, which management believes is not impaired.

The Company's financial instruments not measured at fair value on a recurring basis as of January 26, 2014 and April 28, 2013 were as follows:

<i>(in thousands)</i>	January 26, 2014					April 28, 2013				
	Carrying Amount	Fair Value				Carrying Amount	Fair Value			
		Level 1	Level 2	Level 3	Total		Level 1	Level 2	Level 3	Total
2029 Notes	\$ 40,015	\$ 86,720	\$ —	\$ —	\$ 86,720	\$ 40,015	\$ 59,931	\$ —	\$ —	\$ 59,931
2033 Notes	258,750	268,923	—	—	268,923	—	—	—	—	—
Short-term debt	4,230	—	4,230	—	4,230	—	—	—	—	—
Total	\$ 302,995	\$ 355,643	\$ 4,230	\$ —	\$ 359,873	\$ 40,015	\$ 59,931	\$ —	\$ —	\$ 59,931

The fair value of the 2029 Notes and 2033 Notes is based on the market price in the open market as of or close to the respective dates. The difference between the carrying value and the fair value is primarily due to the spread between the conversion price and the market value of the shares underlying the conversion.

The fair value of short-term debt is estimated by discounting the contractual cash flows at the current interest rates charged for similar debt instruments.

12. Stockholders' Equity

The Company's share-based compensation expense was recorded in the following cost and expense categories:

<i>(in thousands)</i>	Three Months Ended		Nine Months Ended	
	January 26, 2014	January 27, 2013	January 26, 2014	January 27, 2013
	Cost of revenues	\$ 2,140	\$ 1,992	\$ 6,163
Research and development	3,760	2,401	10,866	8,323
Sales and marketing	1,310	830	3,741	2,786
General and administrative	2,558	2,167	7,509	7,814
Total	\$ 9,768	\$ 7,390	\$ 28,279	\$ 23,981

The number of shares of common stock issued or becoming vested under the Company's stock compensation plans was as follows:

	Three Months Ended		Nine Months Ended	
	January 26, 2014	January 27, 2013	January 26, 2014	January 27, 2013
	Employee stock purchase plan	268,289	237,832	608,946
Exercises of stock options	108,921	64,262	633,665	176,806
Restricted stock units vesting	144,360	107,676	1,618,326	1,141,107

As of January 26, 2014, total compensation expense, net of estimated forfeitures, related to unvested stock options and unvested restricted stock units not yet recognized was approximately \$71.6 million, which is expected to be recognized in the Company's operating results over a weighted average period of 31 months.

The total share-based compensation capitalized as part of inventory as of January 26, 2014 was \$2.0 million.

13. Income Taxes

The Company recorded provisions for income taxes of \$2.8 million and \$2.2 million, respectively, for the three month periods ended January 26, 2014 and January 27, 2013 and \$4.8 million and \$1.7 million, respectively, for the nine month periods ended January 26, 2014 and January 27, 2013. The income tax provisions for the three and nine month periods ended January 26, 2014 and January 27, 2013 include state taxes and foreign income taxes arising in certain foreign jurisdictions in which the Company conducts business.

[Table of Contents](#)

The Company records a valuation allowance against its deferred tax assets for each period in which management concludes that it is more likely than not that the deferred tax assets will not be realized. Realization of the Company's net deferred tax assets is dependent upon future taxable income, the amount and timing of which are uncertain. Due to U.S. operating losses in previous years and continuing U.S. earnings volatility, management has established and maintained a full valuation allowance for the U.S. deferred tax assets, which comprise approximately 94% of total deferred tax assets as of January 26, 2014, which management does not believe are more likely than not to be realized in future periods.

Utilization of the Company's net operating loss and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change limitations set forth by Internal Revenue Code Sections 382 and 383 and similar state provisions. Such an annual limitation could result in the expiration of the net operating loss and tax credit carryforwards before full utilization.

14. Pending Litigation

The Company is a party to several pending legal proceedings described below. In each of these proceedings in which the Company is a defendant, the Company believes that it has strong defenses and intends to vigorously defend the action. As of the date of this report, the Company does not believe it is reasonably possible that losses related to any of these cases have been incurred in excess of the amounts, if any, that have been accrued as of January 26, 2014. However, the litigation process is inherently uncertain, and accordingly, the Company cannot predict the outcome of any of these matters with certainty. Future developments in one or more of these matters may cause the Company to revise its estimates and related accruals in future periods.

Class Action and Shareholder Derivative Litigation

March 8, 2011 Earnings Announcement Cases

Several securities class action lawsuits related to the Company's March 8, 2011 earnings announcement alleging claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 have been filed in the United States District Court for the Northern District of California on behalf of a purported class of persons who purchased stock between December 1 or 2, 2010 through March 8, 2011. The named defendants are the Company and its Chairman of the Board, Chief Executive Officer and Chief Financial Officer. To date, no specific amount of damages have been alleged. The cases were consolidated, lead plaintiffs were appointed and a consolidated complaint was filed. The Company filed a motion to dismiss the case. On January 16, 2013, the District Court granted the Company's motion to dismiss and granted the lead plaintiffs leave to amend the consolidated complaint. An amended consolidated complaint was filed on February 6, 2013. Thereafter, the Company filed a renewed motion to dismiss the case. On September 30, 2013, the District Court granted the Company's motion and dismissed the case with prejudice. On October 25, 2013, the lead plaintiffs filed a notice of appeal of the District Court's dismissal ruling, and the appeal is pending.

In addition, two purported shareholder derivative lawsuits related to the Company's March 8, 2011 earnings announcement have been filed in the California Superior Court for the County of Santa Clara, and a third derivative lawsuit has been filed in the United States District Court for the Northern District of California. The complaints assert claims for alleged breach of fiduciary duty, unjust enrichment, and waste on behalf of the Company. Named as defendants are the members of the Company's board of directors, including the Company's Chairman of the Board and Chief Executive Officer, and its Chief Financial Officer. No specific amount of damages has been alleged and, by the derivative nature of the lawsuits, no damages will be alleged, against the Company. The state court cases have been consolidated and a lead plaintiff has been appointed to file a consolidated complaint. The derivative cases were stayed pending a ruling in the federal class action case. Following the September 30 ruling dismissing the class action case, the derivative cases remain stayed, subject to the right of the parties to reinstate them.

Stock Option Cases

On November 30, 2006, the Company announced that it had undertaken a voluntary review of its historical stock option grant practices subsequent to its initial public offering in November 1999. The review was initiated by senior management, and preliminary results of the review were discussed with the Audit Committee of the Company's board of directors. Based on the preliminary results of the review, senior management concluded, and the Audit Committee agreed, that it was likely that the measurement dates for certain stock option grants differed from the recorded grant dates for such awards and that the Company would likely need to restate its historical financial statements to record non-cash charges for compensation expense relating to some past stock option grants. The Audit Committee thereafter conducted a further investigation and engaged independent legal counsel and financial advisors to assist in that investigation. The Audit Committee concluded that measurement dates for certain option grants differed from the recorded grant dates for such awards. The Company's management, in conjunction with the Audit Committee, conducted a further review to finalize revised measurement dates and determine the appropriate

[Table of Contents](#)

accounting adjustments to its historical financial statements. The announcement of the investigation resulted in delays in filing the Company's quarterly reports on Form 10-Q for the quarters ended October 29, 2006, January 28, 2007, and January 27, 2008, and the Company's annual report on Form 10-K for the fiscal year ended April 30, 2007. On December 4, 2007, the Company filed all four of these reports which included revised financial statements.

Following the Company's announcement on November 30, 2006 that the Audit Committee of the board of directors had voluntarily commenced an investigation of the Company's historical stock option grant practices, the Company was named as a nominal defendant in several shareholder derivative cases. These cases were consolidated into two proceedings in federal and state courts in California. The federal court cases were consolidated in the United States District Court for the Northern District of California. The state court cases were consolidated in the Superior Court of California for the County of Santa Clara. The plaintiffs in all cases alleged that certain of the Company's current or former officers and directors caused the Company to grant stock options at less than fair market value, contrary to the Company's public statements (including its financial statements), and that, as a result, those officers and directors were liable to the Company. No specific amount of damages was alleged, and by the nature of the lawsuits, no damages could be alleged against the Company. The state court action was stayed pending resolution of the consolidated federal court action. On June 12, 2007, the plaintiffs in the federal court case filed an amended complaint to reflect the results of the stock option investigation announced by the Audit Committee in June 2007. On August 28, 2007, the Company and the individual defendants filed motions to dismiss the complaint. On January 11, 2008, the Court granted the motions to dismiss, with leave to amend. On May 12, 2008, the plaintiffs filed an amended complaint. The Company and the individual defendants filed motions to dismiss the amended complaint on July 1, 2008. The Court granted the motions to dismiss on September 22, 2009, and entered judgment in favor of the defendants. The plaintiffs appealed the judgment to the United States Court of Appeals for the Ninth Circuit. On April 26, 2011, a panel of the Ninth Circuit reversed the District Court ruling and remanded the case to the District Court for further proceedings. The individual defendants filed additional motions to dismiss the case in the District Court. On July 12, 2012, the District Court issued an order granting the motion as to certain claims and individual defendants, with leave to amend except as to certain defendants, and denying the motion as to other claims and individual defendants.

On June 27, 2013, the parties, through their respective counsel, executed a stipulation of settlement and related documents formalizing a settlement agreement that covers all of the above-referenced federal and state cases. The stipulation of settlement provided that, subject to approval by the District Court, the Company would be entitled to receive payments totaling \$12.5 million from its insurance carriers and \$250,000 from certain individual defendants and would be obligated to make a payment of \$6.3 million to plaintiffs' counsel. In addition, under the terms of the settlement, the insurers would release any rights to recoup approximately \$3.0 million previously advanced for defense costs. On August 9, 2013, the District Court issued an order preliminarily approving the proposed settlement. Following the District Court's preliminary approval, the Company assessed the likelihood of final approval as probable, and accordingly, recognized the recovery of previously incurred direct costs related to the litigation of \$12.75 million as an offset to general and administrative expenses and a charge of \$6.3 million for the payment to plaintiffs' counsel as general and administrative expense in the first quarter of fiscal 2014. On October 18, 2013, the District Court granted final approval of the settlement. Thereafter, the payments to the Company and plaintiffs' counsel were made in accordance with the terms of the stipulation of settlement.

Cheetah Omni Litigation

Customer Texas Litigation

On July 29, 2011, Cheetah Omni LLC filed a complaint for patent infringement in the United States District Court for the Eastern District of Texas against Alcatel-Lucent USA Inc., Alcatel-Lucent Holdings, Inc., Ciena Corporation, Ciena Communications, Inc., Fujitsu Network Communications, Inc., Tellabs, Inc., Tellabs Operations, Inc., Tellabs North America, Inc., Nokia Siemens Networks US LLC, Huawei Technologies USA, Inc. and Huawei Device USA, Inc. Finisar was not named as a defendant in the lawsuit. However, the named defendants or entities affiliated with them are Finisar customers. The complaint alleges that certain ROADM products of the named defendants infringe one or more of seven Cheetah Omni patents. With respect to two of the seven patents, the Company understands Cheetah Omni to be asserting infringement by the customer defendants making, using, offering for sale, selling, and/or importing into the United States certain ROADM products that include a Finisar wavelength selective switch (WSS). Finisar has no specific information regarding whether the claims of infringement with respect to the remaining five asserted Cheetah Omni patents implicate any Finisar products.

Finisar has received a request for indemnification from all six customer defendants with respect to the two patents mentioned above. The Company is currently evaluating the requests for indemnification. On November 19, 2012, the United States District Court in the Finisar Michigan litigation described below issued an order enjoining Cheetah Omni from continuing to pursue its claims against Finisar customers in the Texas litigation with respect to the two patents asserted against products containing a Finisar WSS. As a result, these Texas claims have been stayed pending the outcome of the Michigan litigation. If such a stay is later lifted, the Company expects that the defendant customers will defend the lawsuit vigorously at least with respect to the claims that implicate any Finisar products. However, there can be no assurance that they will be

[Table of Contents](#)

successful in their defense and, if they are not successful with respect to the two patents mentioned above, Finisar may be liable to indemnify the accused customers for significant costs and damages. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending and/or aiding in the defense of the lawsuit with respect to the two patents mentioned above. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business.

Finisar Michigan Litigation

On December 23, 2011, the Company filed a declaratory judgment action in the United States District Court for the Eastern District of Michigan seeking a declaration of invalidity and non-infringement by Finisar and its customers of four Cheetah Omni patents, including the two patents implicating the Company's WSS that are asserted against Finisar customers in the case described above that is currently pending in the Eastern District of Texas. On February 27, 2012, Cheetah Omni filed its answer to the complaint in which it denied the allegations of invalidity with respect to the four patents at issue. However, in its initial answer Cheetah Omni did not deny any of the allegations of non-infringement in the Company's complaint. Cheetah Omni also did not include any counterclaims. Before Cheetah Omni's answer was filed, on February 24, 2012, the Company filed a motion seeking to enjoin Cheetah Omni's pending claims implicating the Company's WSS asserted against the Company's customers in the Eastern District of Texas case described above and for leave to file a motion for summary judgment of non-infringement. This motion with respect to the requested injunction was granted on November 19, 2012 as described above with respect to the customer Michigan litigation. The motion for leave to file a motion for summary judgment has been denied pending completion of claim construction. After Cheetah Omni's answer was filed, the Company filed a motion for judgment on the pleadings in favor of the Company, and Cheetah Omni filed a motion requesting permission to add counterclaims of infringement by the Company's WSS devices. The motion for judgment on the pleadings was denied. The motion for permission to add counterclaims of infringement was granted, and Cheetah Omni thereafter added claims accusing the Company's WSS devices of infringement of the two Cheetah Omni patents. The Company intends to defend the counterclaims vigorously. However, there can be no assurance that the defense will be successful and, if the defense is not successful, Finisar may be liable for substantial damages, including possible indemnification obligations to the Company's customers. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending the counterclaims. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business.

Thomas Swan Litigation

On February 26, 2013, Thomas Swan & Co. Ltd. filed a complaint for patent infringement in the United States District Court for the Eastern District of Texas against the Company. The complaint alleges that Finisar's WSS products, ROADM line cards containing a Finisar WSS, and Waveshaper products infringe four related Thomas Swan patents. The Company's customer, Fujitsu Network Communications, has been added as a co-defendant in this lawsuit. The Company has performed a review of the asserted patents and believes that the patent claims are not infringed and/or are invalid. The Company intends to defend this lawsuit vigorously. However, there can be no assurance that the defense will be successful and, if the defense is not successful, Finisar may be liable for substantial damages, including possible indemnification obligations to the Company's customers. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending the lawsuit. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business. Trial in this case has been scheduled for February 2, 2015.

Mears Technologies Litigation

On May 6, 2013, Mears Technologies, Inc. filed a complaint for patent infringement in the United States District Court for the Eastern District of Texas against the Company. The complaint alleges that Finisar's WSS products, ROADM line cards containing a Finisar WSS, and Waveshaper products infringe a Mears Technologies patent. The Company has performed an initial review of the asserted patent and believes that the patent claims are not infringed and/or are invalid. The Company intends to defend this lawsuit vigorously. However, there can be no assurance that the defense will be successful and, if the defense is not successful, Finisar may be liable for substantial damages, including possible indemnification obligations to the Company's customers. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending the lawsuit. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business. Trial in this case has been scheduled for December 1, 2014.

Other

In the ordinary course of business, the Company is a party to litigation, claims and assessments in addition to those described above. Based on information currently available, management does not believe the impact of these other matters will have a material adverse effect on its business, financial condition, results of operations or cash flows of the Company.

15. Guarantees and Indemnifications

Upon issuance of a guarantee, the guarantor must recognize a liability for the fair value of the obligations it assumes under that guarantee. As permitted under Delaware law and in accordance with the Company's Bylaws, the Company indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The Company may terminate the indemnification agreements with its officers and directors upon 90 days written notice, but termination will not affect claims for indemnification relating to events occurring prior to the effective date of termination. The maximum amount of potential future indemnification is unlimited; however, the Company has a director and officer liability insurance policy that may enable it to recover a portion of any future amounts paid.

The Company enters into indemnification obligations under its agreements with other companies in its ordinary course of business, including agreements with customers, business partners and insurers. Under these provisions the Company generally indemnifies and holds harmless the indemnified party for losses suffered or incurred by the indemnified party as a result of the Company's activities or the use of the Company's products. These indemnification provisions generally survive termination of the underlying agreement. In some cases, the maximum potential amount of future payments the Company could be required to make under these indemnification provisions is unlimited.

The Company believes the fair value of these indemnification obligations is immaterial. Accordingly, the Company has not recorded any liabilities for these agreements as of January 26, 2014. To date, the Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements.

16. Related Parties

During the three and nine month periods ended January 26, 2014, the Company paid \$46,004 and \$152,082, respectively, in cash compensation to a company owned by Guy Gertel, the brother of the Chief Executive Officer of the Company, for sales and marketing services. In addition, during the first quarter of fiscal 2014, the Company granted to Mr. Gertel, for no additional consideration, 4,164 restricted stock units with a fair market value of \$66,957, which vest as follows: 25% on June 24, 2014 and an additional 25% on each of the next three anniversaries thereafter, to be fully vested on June 24, 2017, subject to him continuing to provide services to Finisar.

During the three and nine month periods ended January 27, 2013, the Company paid \$50,466 and \$152,690, respectively, in cash compensation to Mr. Gertel's company. In addition, during the first quarter of fiscal 2013, the Company granted to Mr. Gertel, for no additional consideration, 3,814 restricted stock units with a fair market value of \$49,086, which vest as follows: 25% on June 14, 2013 and an additional 25% on each of the next three anniversaries thereafter, to be fully vested on June 14, 2016, subject to him continuing to provide services to Finisar.

Amounts paid to Mr. Gertel represented values considered by management to be fair and reasonable, reflective of an arm's length transaction.

17. Subsequent Event

On January 31, 2014, the Company acquired all outstanding equity interests in u²t Photonics AG ("u²t"), a German company engaged in research, development and marketing of optical components for high-speed telecom applications, for approximately \$20 million in cash, subject to certain adjustments. With this transaction, the Company will add u²t's Indium-Phosphide ("InP")-based 100 Gbps high speed receivers and photodetectors to its existing portfolio of high speed optics technologies. In addition, this acquisition will consolidate the Company's previously announced partnership with u²t on InP-based IQ Mach-Zehnder modulators for 100 Gbps coherent applications. These receiver, photodiode and modulator technologies and products, when combined with the Company's narrow-line width tunable lasers, will provide a full suite of optical components and enable the Company to offer its customers vertically integrated modules for the 100 Gbps coherent metro and long haul markets. Due to the timing of closing, the Company has not yet finalized its accounting for this acquisition. Accordingly, financial statement disclosures otherwise required by ASC 805 for business combinations have not been presented herein.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains 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, and, consequently, actual results may materially differ from those projected by any forward-looking statements. As a result, you should not place undue reliance on these forward-looking statements since they may not occur.

Certain factors that could cause actual results to differ from those projected are discussed in “Part II. Other Information, Item 1 A. Risk Factors.” We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information or future events.

The following discussion should be read together with our condensed consolidated financial statements and related notes thereto included elsewhere in this report.

Business Overview

We are a leading provider of optical subsystems and components that are used in data communication and telecommunication applications. Our optical subsystems consist primarily of transmitters, receivers, transceivers, transponders and active optical cables, which provide the fundamental optical-electrical or optoelectronic interface for interconnecting the electronic equipment used in building these networks, including the switches, routers and servers used in wireline networks as well as antennas and base stations for wireless networks. These products rely on the use of semiconductor lasers and photodetectors in conjunction with integrated circuits and novel optoelectronic packaging to provide a cost-effective means for transmitting and receiving digital signals over fiber optic cable at speeds ranging from less than 1 gigabit per second, or Gbps, to more than 100 Gbps, over distances of less than 10 meters to more than 2,000 kilometers using a wide range of network protocols and physical configurations. We supply optical transceivers and transponders that allow point-to-point communications on a fiber using a single specified wavelength or, bundled with multiplexing technologies, can be used to supply multi-Gbps bandwidth over several wavelengths on the same fiber.

We also provide products known as wavelength selective switches, or WSS. In long-haul and metro networks, each fiber may carry 50 to 100 different high-speed optical wavelengths. WSS are switches that are used to dynamically switch network traffic from one optical fiber to multiple other fibers without first converting to an electronic signal. The wavelength selective feature means that WSS enable any wavelength or combination of wavelengths to be switched from the input fiber to the output fibers. WSS products are sometimes combined with other components and sold as linecards that plug into a system chassis, referred to as reconfigurable optical add/drop multiplexers, or ROADMs.

Our line of optical components consists primarily of packaged lasers and photodetectors for data communication and telecommunication applications.

Demand for our products is largely driven by the continually growing need for additional network bandwidth created by the ongoing proliferation of data and video traffic driven by video downloads, Internet protocol TV, social networking, on-line gaming, file sharing, enterprise IP/Internet traffic, cloud computing, and data center virtualization that must be handled by both wireline and wireless networks. Mobile traffic is increasing as the result of proliferation of smart phones, tablet computers, and other mobile devices.

Our manufacturing operations are vertically integrated and we produce many of the key components used in making our products including lasers, photodetectors and integrated circuits, or ICs, designed by our internal IC engineering teams. We also have internal assembly and test capabilities that make use of internally designed equipment for the automated testing of our optical subsystems and components.

We sell our optical products primarily to original equipment manufacturers (“OEMs”) of storage systems, networking equipment and telecommunication equipment such as Alcatel-Lucent, Brocade, Ciena, Cisco Systems, EMC, Emulex, Ericsson, Fujitsu, Hewlett-Packard Company, Huawei, IBM, Juniper, Nokia-Siemens, Qlogic and Tellabs, and to their contract manufacturers. These customers, in turn, sell their systems to businesses and to wireline and wireless telecommunications service providers and cable TV operators, collectively referred to as carriers.

[Table of Contents](#)

Since October 2000, we have completed the acquisition of two publicly-held companies. We have also completed the acquisition of 11 privately-held companies and certain businesses and assets from six other companies in order to broaden our product offerings and provide new sources of revenue, production capabilities and access to advanced technologies that we believe will enable us to reduce our product costs and develop innovative and more highly integrated product platforms while accelerating the timeframe required to develop such products.

Critical Accounting Policies

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make judgments, estimates and assumptions in the preparation of our consolidated financial statements and accompanying notes. Actual results could differ from those estimates. We believe there have been no significant changes in our critical accounting policies from those described in our Annual Report on Form 10-K for the fiscal year ended April 28, 2013.

Results of Operations**Revenues**

The following table sets forth changes in revenues by market application:

<i>(in thousands, except percentages)</i>	Three Months Ended		Change	% Change
	January 26, 2014	January 27, 2013		
Datacom revenue	\$ 210,363	\$ 147,670	\$ 62,693	42.5 %
Telecom revenue	83,655	90,681	(7,026)	(7.7)%
Total revenues	\$ 294,018	\$ 238,351	\$ 55,667	23.4 %

<i>(in thousands, except percentages)</i>	Nine Months Ended		Change	% Change
	January 26, 2014	January 27, 2013		
Datacom revenue	\$ 599,051	\$ 426,976	\$ 172,075	40.3 %
Telecom revenue	251,757	263,942	(12,185)	(4.6)%
Total revenues	\$ 850,808	\$ 690,918	\$ 159,890	23.1 %

The increases in datacom revenue in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to an increase in market demand for our 10 Gbps and higher Ethernet transceivers as enterprises upgraded their technology infrastructure driving demand for the products of our OEM system customers and thus higher demand for our datacom module products. The decreases in telecom revenue in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to a decline in average selling prices.

Amortization of Acquired Developed Technology

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 961	\$ 1,930	\$ (969)	(50.2)%
Nine months ended	\$ 3,735	\$ 5,202	\$ (1,467)	(28.2)%

The decreases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to acquired developed technology impairment recognized in the fourth quarter of fiscal 2013.

Gross Profit

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 105,689	\$ 68,044	\$ 37,645	55.3%
As a percentage of revenues	35.9%	28.5%		
Nine months ended	\$ 300,435	\$ 189,715	\$ 110,720	58.4%
As a percentage of revenues	35.3%	27.5%		

[Table of Contents](#)

The increases in gross margin primarily reflected a more favorable product mix in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013.

Research and Development Expenses

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 46,734	\$ 39,725	\$ 7,009	17.6%
Nine months ended	\$ 135,223	\$ 117,514	\$ 17,709	15.1%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to increases in employee compensation related expenses, principally as the result of additional hiring related to new product development activities.

Sales and Marketing Expenses

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 10,911	\$ 10,398	\$ 513	4.9%
Nine months ended	\$ 35,038	\$ 31,291	\$ 3,747	12.0%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to increases in employee compensation related expenses principally as the result of additional activities required as we expand our product offering and customer base.

General and Administrative Expenses

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 14,353	\$ 12,797	\$ 1,556	12.2%
Nine months ended	\$ 38,081	\$ 39,058	\$ (977)	(2.5)%

The increase in general and administrative expenses in the three months ended January 26, 2014 compared to the three months ended January 27, 2013 was primarily due to an increase in employee compensation related expenses. The decrease in general and administrative expenses in the nine months ended January 26, 2014 compared to the nine months ended January 27, 2013 was primarily due to a net benefit of \$5.1 million recognized during the quarter ended July 28, 2013 related to the settlement of stock option derivative litigation, partially offset by an increase in employee compensation related expenses.

Amortization of Purchased Intangibles

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 595	\$ 1,035	\$ (440)	(42.5)%
Nine months ended	\$ 1,785	\$ 2,906	\$ (1,121)	(38.6)%

The decreases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to purchased intangible assets' impairment recognized in the fourth quarter of fiscal 2013.

Interest Income

<i>(in thousands, except percentages)</i>	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 335	\$ 186	\$ 149	80.1%
Nine months ended	\$ 834	\$ 544	\$ 290	53.3%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to higher cash balances during the fiscal 2014 periods compared to the comparable periods in fiscal 2013.

[Table of Contents](#)**Interest Expense***(in thousands, except percentages)*

	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 1,663	\$ 648	\$ 1,015	156.6%
Nine months ended	\$ 2,582	\$ 2,045	\$ 537	26.3%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to the issuance of the 2033 Notes during the third quarter of fiscal 2014.

Other Income (Expense), Net*(in thousands, except percentages)*

	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ (1,873)	\$ (275)	\$ (1,598)	(581.1)%
Nine months ended	\$ (890)	\$ (295)	\$ (595)	(201.7)%

The increase in other expense in the three months ended January 26, 2014 compared to the three months ended January 27, 2013 was primarily due to foreign currency exchange losses. The increase in other income in the nine months ended January 26, 2014 compared to the nine months ended January 27, 2013 was primarily due to foreign currency exchange losses, partially offset by \$664,000 recovered from an escrow during the first quarter of fiscal 2014 related to the sale of one of our minority investments in fiscal 2012 and \$573,000 of accelerated amortization of debt issuance costs related to a revolving credit facility that was terminated during the second quarter of fiscal 2013.

Non-controlling Interest*(in thousands, except percentages)*

	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ (7)	\$ 280	\$ (287)	102.5 %
Nine months ended	\$ 183	\$ 136	\$ 47	(34.6)%

Non-controlling interest for the three and nine months ended January 26, 2014 and January 27, 2013 represents minority shareholders' proportionate share of the net income (loss) of our majority-owned subsidiary, Finisar Korea.

Provision for Income Taxes*(in thousands, except percentages)*

	January 26, 2014	January 27, 2013	Change	% Change
Three months ended	\$ 2,827	\$ 2,153	\$ 674	(31.3)%
Nine months ended	\$ 4,816	\$ 1,733	\$ 3,083	(177.9)%

The income tax provisions for the three and nine months ended January 26, 2014 and January 27, 2013 primarily represent current state and foreign income taxes arising in certain jurisdictions in which we conduct business.

Liquidity and Capital Resources

	Nine Months Ended	
	January 26, 2014	January 27, 2013
<i>(in millions)</i>		
Net cash provided by operating activities	\$ 84.9	\$ 101.5
Net cash used in investing activities	\$ (272.4)	\$ (75.4)
Net cash provided by financing activities	\$ 273.3	\$ 4.8

Operating Cash Flows

Net cash provided by operating activities in the nine months ended January 26, 2014 consisted of our net income, as adjusted to exclude depreciation, amortization and other non-cash items totaling \$80.2 million, and a \$78.1 million increase in working capital primarily related to increases in accounts receivable and inventory, offset by an increase in accounts payable. Accounts receivable increased by \$47.9 million primarily due to the increase in revenues during the year. Inventory increased by \$55.5 million primarily due to increased purchases to support the increased sales level. Net cash provided by operating activities in the nine months ended January 27, 2013 consisted of our net loss, as adjusted to exclude depreciation, amortization and other non-cash items totaling \$78.7 million, and a \$32.2 million decrease in working capital primarily related to decreases

[Table of Contents](#)

in accounts receivable and inventory. Accounts receivable decreased by \$15.6 million primarily due to strong collections during the nine months ended January 27, 2013. Inventory decreased by \$18.5 million due to usage in the manufacturing process.

Investing Cash Flows

Net cash used in investing activities in the nine months ended January 26, 2014 primarily consisted of \$93.0 million of expenditures for capital equipment and \$179.8 million of purchases of short-term marketable securities. Net cash used in investing activities in the nine months ended January 27, 2013 consisted of \$20.6 million related to the acquisition of Red-C and \$65.3 million of expenditures for capital equipment, partially offset by \$10.5 million in proceeds from the sale of a minority interest in a privately-held company. The increase in expenditures for capital equipment related primarily to our new manufacturing facility in Wuxi, China.

Financing Cash Flows

Net cash provided by financing activities for the nine months ended January 26, 2014 primarily reflected \$255.0 million of proceeds, net of issuance costs, from issuance of the 2033 Notes, proceeds from the issuance of shares under our employee stock option and stock purchase plans totaling \$14.1 million and proceeds from a bank loan totaling \$4.2 million. Net cash provided by financing activities for the nine months ended January 27, 2013 primarily consisted of proceeds from the issuance of shares under our employee stock option and stock purchase plans totaling \$8.0 million, partially offset by repayments of borrowings totaling \$3.2 million.

Contractual Obligations and Commercial Commitments

Our contractual obligations at January 26, 2014 were as follows:

<i>(in thousands)</i>	Total	Payments Due by Period			
		Less than 1 Year	1-3 Years	4-5 Years	After 5 Years
5.0% Convertible Senior Notes due 2029	\$ 40,015	\$ 40,015	\$ —	\$ —	\$ —
0.50% Convertible Senior Notes due 2033	258,750	—	—	258,750	—
Interest on 2029 Notes (a)	2,001	2,001	—	—	—
Interest on 2033 Notes (b)	6,308	1,294	2,588	2,426	—
Short-term debt	4,348	4,348	—	—	—
Operating leases (c)	58,204	8,656	19,883	16,660	13,005
Facility construction	10,706	10,706	—	—	—
Purchase obligations (d)	116,461	116,461	—	—	—
Total contractual obligations	\$ 496,793	\$ 183,481	\$ 22,471	\$ 277,836	\$ 13,005

- (a) Includes interest through October 2014 on our 5.0% Convertible Senior Notes due 2029 as we have the right to redeem the notes in whole or in part at any time on or after October 22, 2014.
- (b) Includes interest through December 2018 on our 0.50% Convertible Senior Notes due 2033 as we have to right to redeem the notes in whole or in part at any time on or after December 22, 2018.
- (c) Includes operating lease obligations that have been accrued as restructuring charges.
- (d) Includes open purchase orders with terms that generally allow us the option to cancel or reschedule the order.

The 2029 Notes are convertible by the holders at any time prior to maturity into shares of our common stock at specified conversion prices. These notes are also subject to redemption by the holders in October 2014, 2016, 2019 and 2024. These notes are redeemable by us, in whole or in part, at any time on or after October 22, 2014 if the last reported sale price per share of our common stock exceeds 130% of the conversion price for at least 20 trading days within a period of 30 consecutive trading days ending within five trading days of the date on which we provide the notice of redemption.

The 2033 Notes are convertible into shares of our common stock at specified conversion prices by the holders prior to June 15, 2033 only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending on January 26, 2014 (and only during such fiscal quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period ("measurement period"), in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98%

[Table of Contents](#)

of the product of the last reported sale price of our common stock and the applicable conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events. On or after June 15, 2033 until the maturity, holders may convert their notes at any time, regardless of whether any of the foregoing circumstances have occurred. The 2033 Notes are also subject to redemption by the holders in December 2018, 2023 and 2028. These notes are redeemable by us, in whole or in part, at any time on or after December 22, 2018.

Short-term debt consists of a bank loan to our Korean subsidiary and related scheduled interest payments. The loan bears interest at 4.17% per annum. Interest is payable monthly and principal is due in September 2014.

Operating lease obligations consist primarily of base rents for facilities we occupy at various locations.

Facility construction obligations consist primarily of our ongoing commitments related to construction of our manufacturing operations facility in Wuxi, China.

Purchase obligations represent all open purchase orders and contractual obligations in the ordinary course of business for which we have not received the goods or services. Although open purchase orders are considered enforceable and legally binding, their terms generally allow us the option to cancel, reschedule and adjust our requirements based on our business needs prior to the delivery of goods or performance of services.

Sources of Liquidity and Capital Resource Requirements

At January 26, 2014, our principal sources of liquidity consisted of approximately \$555 million of cash and cash equivalents and short-term investments, of which approximately \$71 million was held by our foreign subsidiaries.

We believe that our existing balances of cash and cash equivalents, together with the cash expected to be generated from future operations, will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 12 months. We may, however, require additional financing to fund our operations in the future, to finance future acquisitions that we may propose to undertake or to repay or otherwise retire all of our outstanding 2029 Notes, in the aggregate principal amount of \$40.0 million, which are subject to redemption by the holders in October 2014, 2016, 2019 and 2024, or our 2033 Notes, in the aggregate principal amount of \$258.8 million, which are subject to redemption by the holders in December 2018, 2033 and 2028. A significant contraction in the capital markets, particularly in the technology sector, may make it difficult for us 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, our business, financial condition and results of operations will be adversely affected.

Off-Balance-Sheet Arrangements

At January 26, 2014 and April 28, 2013, we did not have any off-balance sheet arrangements or relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which are typically established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

For quantitative and qualitative disclosures about market risk affecting Finisar, see Item 7A: “Quantitative and Qualitative Disclosures about Market Risk” in our Annual Report on Form 10-K for the fiscal year ended April 28, 2013. Our exposure related to market risk has not changed materially since April 28, 2013.

Item 4. *Controls and Procedures*

Evaluation of Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chairman of the Board, our Chief Executive Officer and our Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our Chairman of the Board, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this quarterly report.

Changes in Internal Control Over Financial Reporting

[Table of Contents](#)

There were no changes in our internal control over financial reporting during the quarter ended January 26, 2014 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. *Legal Proceedings*

Reference is made to “Part I, Item 1, Financial Statements - Note 14. Pending Litigation” for a description of pending legal proceedings, including material developments in certain of those proceedings during the quarter ended January 26, 2014.

Item 1A. *Risk Factors*

OUR FUTURE PERFORMANCE IS SUBJECT TO A VARIETY OF RISKS, INCLUDING THOSE DESCRIBED BELOW. IF ANY OF THE FOLLOWING RISKS ACTUALLY OCCUR, OUR BUSINESS COULD BE HARMED AND THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE. YOU SHOULD ALSO REFER TO THE OTHER INFORMATION CONTAINED IN THIS REPORT, INCLUDING OUR CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND THE RELATED NOTES. THE RISK FACTORS DESCRIBED BELOW DO NOT CONTAIN ANY MATERIAL CHANGES FROM THOSE PREVIOUSLY DISCLOSED IN ITEM 1A OF OUR ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED APRIL 28, 2013.

Our quarterly revenues and operating results fluctuate due to a variety of factors, which may result in volatility or a decline in the price of our stock.

Our quarterly operating results have varied significantly due to a number of factors, including:

- fluctuation in demand for our products;
- the timing of new product introductions or enhancements by us and our competitors;
- the level of market acceptance of new and enhanced versions of our products;
- the timing of acquisitions that we have undertaken;
- the timing or cancellation of large customer orders;
- the length and variability of the sales cycle for our products;
- pricing policy changes by us and our competitors and suppliers;
- the availability of development funding and the timing of development revenue;
- changes in the mix of products sold;
- increased competition in product lines, and competitive pricing pressures; and
- the evolving and unpredictable nature of the markets for products incorporating our optical components and subsystems.

We expect that our operating results will continue to fluctuate in the future as a result of these factors and a variety of other factors, including:

- fluctuations in manufacturing yields;
- the emergence of new industry standards;
- failure to anticipate changing customer product requirements;
- the loss or gain of important customers;
- product obsolescence; and
- the amount of research and development expenses associated with new product introductions.

Our operating results could also be harmed by:

- the continuation or worsening of the current global economic slowdown or economic conditions in various geographic areas where we or our customers do business;
- acts of terrorism and international conflicts or domestic crises;
- other conditions affecting the timing of customer orders; or
- a downturn in the markets for our customers' products, particularly the data storage and networking and telecommunication components markets.

We may experience a delay in generating or recognizing revenues for a number of reasons. Orders at the beginning of each quarter are typically lower than expected revenues for that quarter and are generally cancelable with minimal notice. 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

[Table of Contents](#)

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.

As a result of these factors, our operating results may vary significantly from quarter to quarter. Accordingly, we believe that period-to-period comparisons of our results of operations should not be relied upon as indications of future performance. Any shortfall in revenues or net income from the previous quarter or from levels expected by the investment community could cause a decline in the trading price of our stock.

We may lose sales if our suppliers or independent contract manufacturers fail to meet our needs or go out of business.

We currently purchase a number of key components used in the manufacture of our products from single or limited sources, and we rely on several independent contract manufacturers to supply us with certain key components and subassemblies, including lasers, modulators, and printed circuit boards. We depend on these sources to meet our production needs. Moreover, we depend on the quality of the components and subassemblies that they supply to us, over which we have limited control. Several of our suppliers are or may become financially unstable as the result of current global market conditions. In addition, from time to time we have encountered shortages and delays in obtaining components, and we may encounter additional 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 with any of our component suppliers or contract manufacturers. As a result, a supplier or contract manufacturer can discontinue supplying components or subassemblies to us without penalty. If a supplier were to discontinue supplying a key component or cease operations, the resulting product manufacturing and delivery delays could be lengthy, and our business could be substantially harmed. 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. Similarly, disruptions in the operations of our key suppliers or in the services provided by our contract manufacturers, including disruptions due to natural disasters, or the transition to other suppliers of these key components or services could lead to supply chain problems or delays in the delivery of our products. These problems or delays could damage our relationships with our customers and adversely affect our business.

We use rolling forecasts based on anticipated product orders to determine our component and subassembly 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 could significantly harm our business.

If we are unable to realize anticipated cost savings from the transfer of certain manufacturing operations to our overseas locations and increased use of internally-manufactured components our results of operations could be harmed.

As part of our ongoing initiatives to reduce the cost of revenues, we expect to realize significant cost savings through (i) the transfer of certain product manufacturing operations to lower cost off-shore locations and (ii) product engineering changes to enable the broader use of internally-manufactured components. The transfer of production to overseas locations may be more difficult and costly than we currently anticipate which could result in increased transfer costs and time delays. Further, following transfer, we may experience lower manufacturing yields than those historically achieved in our U.S. manufacturing locations. In addition, the engineering changes required for the use of internally-manufactured components may be more technically-challenging than we anticipate and customer acceptance of such changes could be delayed. If we fail to achieve the planned product manufacturing transfer and increase in internally-manufactured component use within our currently anticipated timeframe, or if our manufacturing yields decrease as a result, we may be unsuccessful in achieving cost savings or such savings will be less than anticipated, and our results of operations could be harmed.

Continued competition in our markets may lead to an accelerated reduction in our prices, revenues and market share.

The end markets for optical products have experienced significant industry consolidation during the past few years while the industry that supplies these customers has experienced less consolidation. As a result, the markets for optical subsystems and components 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. Increased consolidation in our industry, should it occur, will reduce the number of our competitors but would be likely to further strengthen surviving industry participants. We may not be able to compete successfully against either current or

[Table of Contents](#)

future competitors. Companies competing with us may introduce products that are competitively priced, have increased performance or functionality, or incorporate technological advances and may be able to react quicker to changing customer requirements and expectations. There is also the risk that network systems vendors may re-enter the subsystem market and begin to manufacture the optical subsystems incorporated in their network systems. 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. Our principal competitors for data communication applications include Avago Technologies, JDS Uniphase and Oclaro. Our principal competitors for telecommunication applications include JDS Uniphase, Oclaro and Sumitomo. Our competitors continue to introduce improved products and we will have to do the same to remain competitive.

Decreases in average selling prices of our products may reduce our 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 pricing pressures from significant customers. In particular, we typically conduct pricing negotiations for our existing products with some of our largest telecommunication OEM customers in the last several months of the calendar year. Decreases in our average selling prices resulting from these negotiations typically become effective at the beginning of the next calendar year and generally have an adverse impact on our gross margins in future quarters. This impact is typically most pronounced in our fourth fiscal quarter ending in April, when the impact of the new pricing is first felt over a full quarter. In order to 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.

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.

Gross margins on individual products fluctuate over the product's life cycle. 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.

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 periodically 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 revenues in future periods again fall substantially below our expectations, or should we fail again to accurately forecast changes in demand mix, we could again be required to record substantial charges for obsolete or excess inventories or non-cancelable purchase commitments.

If we encounter sustained yield problems or other delays in the production or delivery of our internally-manufactured components or in the final assembly and test of our products, we may lose sales and damage our customer relationships.

Our manufacturing operations are highly vertically integrated. 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 and have developed our own facilities for the final assembly and testing of our products. For example, we

[Table of Contents](#)

design and manufacture many critical components incorporated in transceivers used for data communication and telecommunication applications, including all of the short wavelength VCSEL lasers, at our wafer fabrication facility in Allen, Texas and manufacture a portion of our internal requirements for longer wavelength lasers at our wafer fabrication facility in Fremont, California. We assemble and test most of our transceiver products at our facility in Ipoh, Malaysia. As a result of this vertical integration, we have become increasingly dependent on our internal production capabilities. The manufacture of critical components, including the fabrication of wafers, and the assembly and testing of our products, involve highly complex processes. For example, 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. From time to time, we have experienced problems achieving acceptable yields at our wafer fabrication facilities, resulting in delays in the availability of components. Moreover, an increase in the rejection rate of products during the quality control process before, during or after manufacture, results in lower yields and margins. In addition, changes in manufacturing processes required as a result of changes in product specifications, changing customer needs and the introduction of new product lines have historically significantly reduced our manufacturing yields, resulting in low or negative margins on those products. 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. Our inability to supply components to meet our internal needs could harm our relationships with customers and have an adverse effect on our business.

The markets for our products are 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, substantial capital investment, changes in customer requirements and evolving industry standards with respect to the protocols used in data communication and telecommunication networks. 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. For example, the market for optical subsystems is currently characterized by a trend toward the adoption of “pluggable” modules and subsystems that do not require customized interconnections and by the development of more complex and integrated optical subsystems. We expect that new technologies will emerge as competition and the need for higher and more cost-effective bandwidth increases. 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 and/or a charge for the impairment of long-lived assets related to such 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 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 achieve and sustain 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. The introduction of new products also requires significant investment to ramp up production capacity, for which benefit will not be realized if customer demand does not develop as expected. Ramping of production capacity also entails risks of delays which can limit our ability to realize the full benefit of the new product introduction. 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.

[Table of Contents](#)

Our future success ultimately depends on the continued growth of the communications industry and, in particular, the continued expansion of global information networks, particularly those directly or indirectly dependent upon a fiber optics infrastructure.

We are relying on increasing demand for voice, video and other data delivered over high-bandwidth network systems as well as commitments by network systems vendors to invest in the expansion of the global information network. As network usage and bandwidth demand increase, so does the need for advanced optical networks to provide the required bandwidth. Without network and bandwidth growth, the need for optical subsystems and components, and hence our future growth as a manufacturer of these products, will be jeopardized, and our business would be significantly harmed.

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 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. Our success will depend on our continued ability to develop and manage relationships with our major customers. Although we are attempting to expand our customer base, we expect that significant customer concentration will continue for the foreseeable future. We may not be able to offset any decline in revenues from our existing major customers with revenues from new customers, and our quarterly results may be volatile because we are dependent on large orders from these customers that may be reduced or delayed.

The markets in which we have historically sold our optical subsystems and components products are dominated by a relatively small number of systems manufacturers, thereby limiting the number of our potential customers. Recent consolidation of portions of our customer base, including telecommunication systems manufacturers, and potential future consolidation, may have a material adverse impact on our business. 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. Expense reduction measures that we have implemented over the past several years, and additional action we are taking 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 inventory hub arrangements under which customers may draw down inventory to satisfy their demand as needed or 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. If our major customers stop purchasing our products for any reason, our business and results of operations would be harmed.

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 typically spans over a year. During this time, customers may perform, or require us to perform, extensive and lengthy evaluation and testing of our products before purchasing and using the products in their equipment. These products often take substantial time to develop because of their complexity and because customer specifications sometimes change during the development cycle. 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 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 and cash equivalents, together with the cash expected to be generated from future operations, will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 12 months. We may, however, require additional financing to fund our operations in the future, to finance future acquisitions that we may propose to undertake or to repay or otherwise retire our outstanding 2029 Notes, in the aggregate principal amount of \$40 million, which are subject to redemption by the holders in October 2014, 2016, 2019 and 2024, or our 2033 Notes, in the aggregate principal amount of \$258.8 million, which are subject to redemption by the holders in December 2018, 2033 and 2028. 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. If we do raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders could be significantly diluted, and these newly-issued securities may have rights, preferences or privileges senior to those of existing stockholders.

Our international business and operations expose us to additional risks.

Products shipped to customers located outside the United States account for a majority of our revenues. In addition, we have significant tangible assets located outside the United States. Our principal manufacturing facilities are located in Malaysia and China. We currently operate smaller facilities in Australia, Israel, Korea and Sweden, and we are further expanding one of our manufacturing facilities in China. We also rely on several contract manufacturers located in Asia for our supply of key subassemblies. Conducting business outside the United States subjects us to a number of additional risks and challenges, including:

- periodic changes in a specific country's or region's economic conditions, such as recession;
- compliance with a wide variety of domestic and foreign laws and regulations and unexpected changes in those laws and regulatory requirements, including uncertainties regarding taxes, tariffs, quotas, export controls, export licenses and other trade barriers;
- certification requirements;
- environmental regulations;
- fluctuations in foreign currency exchange rates;
- inadequate protection of intellectual property rights in some countries;
- potential political, legal and economic instability, foreign conflicts, and the impact of regional and global infectious illnesses in the countries in which we and our customers, suppliers and contract manufacturers are located;
- preferences of certain customers for locally produced products;
- difficulties and costs of staffing and managing international operations across different geographic areas and cultures, including assuring compliance with the U.S. Foreign Corrupt Practices Act and other U. S. and foreign anticorruption laws;
- seasonal reductions in business activities in certain countries or regions; and
- fluctuations in freight rates and transportation disruptions.

[Table of Contents](#)

These factors, individually or in combination, could impair our ability to effectively operate one or more of our foreign facilities or deliver our products, result in unexpected and material expenses, or cause an unexpected decline in the demand for our products in certain countries or regions. Our failure to manage the risks and challenges associated with our international business and operations could have a material adverse effect on our business.

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 ringgit, the Chinese yuan, the Australian dollar, the Israeli shekel, the Swedish krona, and the Korean won. 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. To date, we have not engaged in currency hedging transactions to decrease the risk of financial exposure from fluctuations in foreign exchange rates.

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. Additionally, significant technology used in our product lines is not the subject of any patent protection, and we may be unable to obtain patent protection on such technology in the future. 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.

Claims that we or any user of our products 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 are currently involved as a defendant in patent infringement litigation and have been involved in the past as a defendant in such lawsuits. In one such lawsuit involving two of our cable TV products, we were found liable for infringement, and the two products have subsequently been redesigned. In addition, in connection with a patent infringement lawsuit that we initiated in January 2010, the defendants raised counterclaims alleging patent infringement by us, and in a later case, the defendant also raised patent infringement counterclaims against us. In connection with our settlement of two of the cases, we received royalty free licenses to the patents involved. While, as a result of various procedural events in the 2010 lawsuit and a tolling agreement between the parties, certain patent counterclaims are not currently being asserted against us, such claims could be re-asserted against us in the future. 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,

[Table of Contents](#)

could significantly harm our business. Further, claims against a user of our products in combination with other products that such use infringes proprietary rights of third parties could cause users to choose to not or be required to not utilize our products in such combination, which could harm our sales of such products. Any claims, against us or any use of our products, 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. 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.

Numerous patents in our industry are held by others, including academic institutions and competitors. Optical subsystem suppliers may seek to gain a competitive advantage or other third parties may seek an economic return on their intellectual property portfolios by making infringement claims against us. In the future, we may need to obtain license rights to patents or other intellectual property held by others to the extent necessary for our business. Unless we are able to obtain those licenses on commercially reasonable terms, patents or other intellectual property held by others could inhibit our development of new products. Licenses granting us the right to use third party technology may not be available on commercially reasonable terms, if at all. Generally, a license, if granted, would include payments of up-front fees, ongoing royalties or both. These payments or other terms could have a significant adverse impact on our operating results.

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.

If we are unable to retain our key management and technical personnel and attract and retain additional key personnel as required, our business could be significantly harmed.

Our future success is substantially dependent upon the continued contributions of the members of our senior management team, many of whom have years of management, engineering, sales, marketing and manufacturing experience that would be difficult to replace. We also believe our future success will depend in large part upon our ability to attract and retain additional highly skilled managerial, technical, sales and marketing, finance and manufacturing personnel. In particular, we will need to increase the number of our 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. In making employment decisions, particularly in the high-technology industries, job candidates often consider the value of the equity they are to receive in connection with their employment. Therefore, significant volatility in the price of our common stock may adversely affect our ability to attract or retain key management and technical personnel. The loss of service of any our key management or technical employees, our inability to attract or retain qualified personnel in the future or delays in hiring key personnel, as required, could significantly harm our business. 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 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 actions 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 actions in the Middle East, including the economic consequences of the war in Afghanistan 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;

[Table of Contents](#)

- greater risks of disruption in the operations of our China, Singapore and Israeli facilities and our Asian contract manufacturers, including contract manufacturers located in Thailand, 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.

Future acquisitions could be difficult to integrate, disrupt our business, dilute stockholder value and harm our operating results.

In addition to our combination with Optium in August 2008 and our acquisitions of Ignis in May 2011 and Red-C in July 2012, we have completed the acquisition of ten privately-held companies and certain businesses and assets from six other companies since October 2000. 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.

The Optium merger and several of our other past acquisitions have been material, and acquisitions that we may complete in the future may be material. In 13 of our 19 acquisitions, we issued common stock or notes convertible into common stock as all or a portion of the consideration. The issuance of common stock or other equity securities by us in connection with any future acquisition would dilute our stockholders' percentage ownership.

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.

Not all of our past acquisitions have been successful. In the past, we have subsequently sold some of the assets acquired in prior acquisitions, discontinued product lines and closed 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. Through fiscal 2013, we have written off all of the goodwill associated with our past acquisitions with the exception of the recently completed acquisitions of Ignis and Red-C. We cannot assure you that we will be successful in overcoming problems encountered in connection with the recent Ignis acquisition or potential future acquisitions, and our inability to do so could significantly harm our business. In addition, to the extent that the economic benefits associated with the Ignis acquisition or any of our future 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 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.

Since inception we have made minority equity investments in a number of early-stage technology companies, totaling approximately \$61.9 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. Between fiscal 2003 and 2013, we wrote off an aggregate of \$26.2 million in seven investments which became impaired and reclassified \$4.2 million of another investment to goodwill as the investment was deemed to have no value. We may be required to write off all or a portion of the \$2.0 million in such equity investments remaining on our balance sheet as of January 26, 2014 in future periods.

Our ability to utilize certain net operating loss carryforwards and tax credit carryforwards may be limited under Sections 382 and 383 of the Internal Revenue Code.

As of April 28, 2013, we had net operating loss, or NOL, carryforward amounts of approximately \$467.3 million, \$160.4 million and \$75.7 million for U.S. federal, state and foreign income tax purposes, respectively, and tax credit carryforward amounts of approximately \$22.8 million and \$14.9 million for U.S. federal and state income tax purposes, respectively. The federal and state tax credit carryforwards will expire at various dates beginning in 2014 through 2032, and \$108,000 of such carryforwards will expire in the next five years. The federal and state NOL carryforwards will expire at various dates beginning in 2014 through 2029, and \$127.2 million of such carryforwards will expire in the next five years. Utilization of these NOL and tax credit carryforward amounts may be subject to a substantial annual limitation if the ownership change limitations under Sections 382 and 383 of the Internal Revenue Code and similar state provisions are triggered by changes in the ownership of our capital stock. Such an annual limitation could result in the expiration of the NOL and tax credit carryforward amounts before utilization.

We will lose sales if we are unable to obtain government authorization to export certain of our products, and we would be subject to legal and regulatory consequences if we do not comply with applicable export control laws and regulations.

Exports of certain of our products are subject to export controls imposed by the U.S. Government and administered by the United States Departments of State and Commerce. In certain instances, these regulations may require pre-shipment authorization from the administering department. For products subject to the Export Administration Regulations, or EAR, administered by the Department of Commerce's Bureau of Industry and Security, the requirement for a license is dependent on the type and end use of the product, the final destination, the identity of the end user and whether a license exception might apply. Virtually all exports of products subject to the International Traffic in Arms Regulations, or ITAR, administered by the Department of State's Directorate of Defense Trade Controls, require a license. Certain of our fiber optics products are subject to EAR and certain of our RF-over-fiber products, as well as certain products developed with government funding, are currently subject to ITAR. Products developed and manufactured in our foreign locations are subject to export controls of the applicable foreign nation.

Given the current global political climate, obtaining export licenses can be difficult and time-consuming. Failure to obtain export licenses for these shipments could significantly reduce our revenue and materially adversely affect our business, financial condition and results of operations. Compliance with U.S. Government regulations also subjects us to additional fees and costs. The absence of comparable restrictions on competitors in other countries may adversely affect our competitive position.

We have previously been the subject of inquiries from the Department of State and the Department of Justice regarding compliance with ITAR. Although these inquiries were closed with no action being taken, we expended significant time and resources to resolve them, and future inquiries of this type could also be costly to resolve.

We are subject to pending securities class action and shareholder derivative legal proceedings.

Several securities class action lawsuits were filed against us and our Chairman of the Board, Chief Executive Officer and Chief Financial Officer following our March 8, 2011 announcement of unaudited financial results for the third quarter of fiscal 2011 and our financial outlook for the fourth quarter of fiscal 2011. We also have been named as a nominal defendant in several shareholder derivative lawsuits filed in 2011 concerning our March 8, 2011 earnings announcement. No specific amounts of damages have been alleged in the class action lawsuits and, by the nature of the lawsuits, no damages will be alleged against Finisar in the derivative lawsuits.

We will continue to incur legal fees in connection with these pending cases, including expenses for the reimbursement of legal fees of present and former officers and directors under indemnification obligations. The expense of continuing to defend such litigation may be significant. We intend to defend these lawsuits vigorously, however there can be no assurance that we will be successful in any defense. If any of the lawsuits related to our earnings announcement are adversely decided, we may be liable for significant damages directly or under our indemnification obligations, which could adversely affect our business, results of operations and cash flows. Further, the amount of time that will be required to resolve these lawsuits is unpredictable and these actions may divert management's attention from the day-to-day operations of our business, which could adversely affect our business, results of operations and cash flows.

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, floods, fire, power loss, telecommunication 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, and our principal manufacturing operations and those of most of our key suppliers and contract manufacturers are located in Asia. These areas have been vulnerable to natural disasters, such as earthquakes, floods and fires, 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.

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

As of January 26, 2014, we had outstanding an aggregate principal amount of \$40.0 million of our 2029 Notes and an aggregate principal amount of \$258.8 million of our 2033 Notes. The 2029 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 \$10.68 per share, and the 2033 Notes are convertible at the option of the holder, under certain circumstances, into shares of our common stock at an initial conversion price of \$30.18 per share, subject to adjustment. An aggregate of approximately 3,748,478 shares of common stock would be issued upon the conversion of all outstanding 2029 Notes and an aggregate of approximately 8,572,413 shares of common stock would be issued upon the conversion of all outstanding 2033 Notes at these conversion prices, which would dilute the voting power and ownership percentage of our existing stockholders. We have previously entered into privately negotiated transactions with certain holders of our convertible 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. We may enter into similar transactions in the future and, if we do so, there will 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.

Although we believe that these charter and bylaw provisions and provisions of Delaware law 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.

We do not currently intend to pay dividends on Finisar common stock and, consequently, a stockholder's ability to achieve a return on such stockholder's investment will depend on appreciation in the price of the common stock.

We have never declared or paid any cash dividends on Finisar common stock and we do not currently intend to do so for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Therefore, a stockholder is not likely to receive any dividends on such stockholder's common stock for the foreseeable future.

[Table of Contents](#)

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. If any of the foregoing occurs, our stock price could fall and we may be exposed to class action lawsuits that, even if unsuccessful, could be costly to defend and a distraction to management.

Item 6. Exhibits

Exhibit Number	Exhibit Description
4.1	Indenture dated as of December 16, 2013, by and between Finisar Corporation and Wells Fargo Bank, National Association (1)
10.1	Purchase Agreement dated December 10, 2013, by and between Finisar Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated
31.1	Certification of Co-Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Co-Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chairman of the Board Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.3	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase

(1) Incorporated by reference to Exhibit 4.1 to Registrant's Current Report on Form 8-K filed December 16, 2013.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FINISAR CORPORATION

By: /s/ JERRY S. RAWLS

Jerry S. Rawls

Chairman of the Board of Directors (Co-Principal Executive Officer)

By: /s/ EITAN GERTEL

Eitan Gertel

Chief Executive officer (Co-Principal Executive Officer)

By: /s/ KURT ADZEMA

Kurt Adzema

*Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)*

Dated: March 6, 2014

EXECUTION VERSION

0.50% Convertible Senior Notes due 2033**FINISAR CORPORATION****PURCHASE AGREEMENT**

December 10, 2013

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park

New York, New York 10036

Ladies and Gentlemen:

Finisar Corporation, a Delaware corporation (the "*Company*"), proposes to issue and sell to Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "*Initial Purchaser*") an aggregate of \$225,000,000 principal amount of its 0.50% Convertible Senior Notes due 2033 (the "*Firm Securities*"). In addition, the Company has granted to the Initial Purchaser an option to purchase up to an additional aggregate of \$33,750,000 principal amount of its 0.50% Convertible Senior Notes due 2033 (the "*Option Securities*") as provided in Section 3 hereof. The Firm Securities and, if and to the extent such option is exercised, the Option Securities, are collectively called the "*Securities*." The Securities will be convertible into shares (the "*Underlying Securities*") of common stock of the Company, \$0.001 par value (the "*Common Stock*"). The Securities will be issued pursuant to an Indenture (the "*Indenture*"), to be dated as of December 16, 2013, between the Company and Wells Fargo Bank, N.A., as trustee (the "*Trustee*").

The Company understands that the Initial Purchaser proposes to make an offering of the Securities on the terms and in the manner set forth herein and agrees that the Initial Purchaser may resell, subject to the conditions set forth herein, all or a portion of the Securities to purchasers at any time after this Agreement has been executed and delivered. The Securities and the Underlying Securities will be offered without being registered under the Securities Act of 1933, as amended, in reliance on exemptions therefrom provided by the Act and the rules and regulations thereunder (collectively, the "*Securities Act*").

Section 1. Offering Memorandum. In connection with the offer and sale of the Securities, the Company (a) has prepared and delivered to you copies of (i) a preliminary offering memorandum dated December 9, 2013 (the "*Preliminary Offering Memorandum*") and (ii) a pricing term sheet attached hereto as Schedule A, which includes the pricing terms and other information with respect to the Securities and other matters not included in the Preliminary Offering Memorandum (the "*Pricing Term Sheet*") and (b) will prepare and deliver to you on the date hereof or the next succeeding day, copies of a final offering memorandum dated December 10, 2013 (the "*Final Offering Memorandum*"), each for use by you in connection with your solicitation of purchases of, or offering of, the Securities. "*Offering Memorandum*" means, with respect to any date or time referred to in this Agreement, the most recent Offering Memorandum (whether the Preliminary Offering Memorandum or Final Offering Memorandum, or any amendment or supplement to either document), including exhibits thereto, which has been prepared and delivered by the Company to you in connection with your solicitation of purchases of, or offering of, the Securities. The Offering Memorandum includes or incorporates certain information concerning, among other things, the Company, the Securities and the Underlying Securities. The Offering Memorandum also incorporates by reference each document or report filed by the Company with the Securities and Exchange Commission (the "*Commission*") pursuant to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), after the date thereof and prior to the

termination of the distribution of the Securities as set forth in the Offering Memorandum, except for Current Reports on Form 8-K which contain only information furnished under Items 2.02 or 7.01 of Form 8-K. As used herein, the term “*Offering Memorandum*” shall include in each case the documents incorporated by reference therein (the “*Incorporated Documents*”), and any and all supplements and amendments to such documents incorporated by reference therein and any and all amendments and supplements to the Offering Memorandum. The terms “*supplement*,” “*amendment*” and “*amend*” as used herein shall include all documents deemed to be incorporated by reference in the Offering Memorandum that are filed subsequent to the date of such Offering Memorandum with the Commission pursuant to the Exchange Act.

Section 2. Representations and Warranties of the Company. The Company hereby represents, warrants and agrees with the Initial Purchaser as follows:

(a) Each Incorporated Document filed by the Company with the Commission pursuant to the Exchange Act complied or will comply as to form, as the case may be, when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder; and the Offering Memorandum, as amended or supplemented, as of its date, at all subsequent times until the expiration of the Offering Memorandum Delivery Period (as defined in Section 4(a) hereof), and at the First Closing Date and Second Closing Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Offering Memorandum, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to you furnished to the Company by you, specifically for use in the preparation thereof it being understood and agreed that the only such information furnished by you consists of the information described as such in Section 7(f) hereof.

(b) The Preliminary Offering Memorandum, as of its date, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Offering Memorandum or any Pricing Term Sheet based upon and in conformity with written information relating to you furnished to the Company by you, specifically for use in the preparation thereof, it being understood and agreed that the only such information furnished by you consists of the information described as such in Section 7(f) hereof.

(c) Neither (A) the Pricing Term Sheet issued at or prior to the Time of Sale and the Preliminary Offering Memorandum, all considered together (collectively, the “*Time of Sale Disclosure Package*”), nor (B) any individual Supplemental Offering Materials (as defined below), when considered together with the Time of Sale Disclosure Package, includes or included as of the Time of Sale any untrue statement of a material fact or omits or omitted as of the Time of Sale to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Offering Memorandum or any Pricing Term Sheet based upon and in conformity with written information relating to you furnished to the Company by you, specifically for use in the preparation thereof, it being understood and agreed that the only such information furnished by you consists of the information described as such in Section 7(f) hereof. As used in this paragraph and elsewhere in this Agreement:

(1) “*Time of Sale*” means 6:15 p.m., Pacific time, on December 10, 2013.

(2) “*Supplemental Offering Materials*” means any “written communication” (within the meaning of the Securities Act) prepared by or on behalf of the Company, or used or referred to by the Company, that constitutes an offer to sell or a solicitation of an offer to buy the Securities other than the Offering Memorandum or amendments or supplements thereto (including the Pricing Term Sheet), including, without limitation, any roadshow relating to the Securities that constitutes such a written communication.

(d) The financial statements of the Company and its consolidated subsidiaries, together with the related notes thereto, set forth or incorporated by reference in the Time of Sale Disclosure Package and the

Offering Memorandum comply as to form in all material respects with the requirements of Regulation S-X under the Securities Act and fairly present the financial condition of the Company and its consolidated subsidiaries as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with generally accepted accounting principles in the United States (“GAAP”) consistently applied throughout the periods involved; and the other financial information included or incorporated by reference into the Time of Sale Disclosure Package and the Offering Memorandum has been derived from the accounting records of the Company and its consolidated subsidiaries and present fairly the information shown thereby. There are no material liabilities or obligations (including any off-balance sheet arrangements (as defined in Regulation S-K Item 303(a)(4)(ii)) or “variable interest entities” within the meaning of Financial Accounting Standards Board Interpretation No. 46) not disclosed in the Time of Sale Disclosure Package or the Offering Memorandum or that are reasonably likely to have a material current or future effect on the Company’s financial condition, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources. Ernst & Young LLP, which has expressed its opinion with respect to the financial statements and schedules incorporated by reference into the Time of Sale Disclosure Package and the Offering Memorandum, is an independent public accounting firm with respect to the Company within the meaning of the Securities Act and the rules and regulations of the Commission thereunder and the Public Company Accounting Oversight Board (United States) and such accountants are not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”).

(e) The Company has been duly organized, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Disclosure Package and the Offering Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders’ equity, properties, management, business or prospects of Finisar Malaysia Sdn Bhd (“*Finisar Malaysia*”) or of the Company and its subsidiaries, taken as a whole, or adversely effect the power or ability of the Company to perform its obligations under this Agreement, the Indenture or the Securities or to consummate the transactions contemplated by the Time of Sale Disclosure Package and the Offering Memorandum (a “*Material Adverse Effect*”).

(f) All of the direct and indirect subsidiaries of the Company except such entities that would not individually or in the aggregate constitute a “significant subsidiary” as such term is defined in Rule 1-02 of Regulation S-X as promulgated under the Exchange Act (each, a “*Principal Subsidiary*”) are set forth on Exhibit 21 of the Company’s most recently filed Annual Report on Form 10-K. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Principal Subsidiary, except for (i) Fi-Ra Photonics, a Korean corporation, 71.8% of the capital stock of which is owned indirectly by the Company, (ii) Ignis AS, a Norwegian corporation, 19.9% of the capital stock of which is owned directly by the Company, and (iii) SmartOptics AS, a Norwegian corporation, and SmartOptics Sverige AB, a Swedish corporation, each of which is wholly-owned by Ignis AS. All of such capital stock and other equity interests of each Principal Subsidiary owned by the Company is owned free and clear of any liens, and all the issued and outstanding shares of capital stock of each Principal Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. Each Principal Subsidiary has been duly organized, is validly existing as a corporation, partnership or limited liability company in good standing under the laws of the jurisdiction of its organization, has the corporate or other power and authority to own its property and to conduct its business as described in the Time of Sale Disclosure Package and the Offering Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have, individually or in the aggregate, a Material Adverse Effect. No Principal Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Principal Subsidiary’s capital stock, from repaying to the Company any loans or advances to such Principal Subsidiary from the Company or from transferring any of such Principal Subsidiary’s property or assets to the Company or any other subsidiary of the Company.

(g) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(h) The Company has an authorized capitalization as set forth in the Time of Sale Disclosure Package and the Offering Memorandum; and all of the outstanding Common Stock has been duly authorized and is validly issued, fully paid and non-assessable, was issued in compliance with all United States federal and state and foreign securities laws and not in violation of any preemptive right, resale right, right of first refusal or similar right and conforms to the description thereof contained in the Time of Sale Disclosure Package and the Offering Memorandum. All of the Company's options, warrants and other rights to purchase or exchange any securities for the Company's Common Stock have been duly authorized and validly issued, conform to the description thereof contained in the Time of Sale Disclosure Package and the Offering Memorandum, and the Company reasonably believes all such options, warrants and other rights to purchase or exchange any securities for the Company's Common Stock were issued in compliance with all United States federal and state and foreign securities laws. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any person (other than the persons purchasing the Securities) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. No further approval or authorization of any stockholder, the Board of Directors of the Company or others is required for the issuance of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders. No person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company, which rights are currently not satisfied.

(i) With respect to the stock options (the "*Stock Options*") granted pursuant to the stock-based compensation plans of the Company and the Subsidiaries (the "*Company Stock Plans*"), except as described in the Time of Sale Disclosure Package and the Offering Memorandum, (A) each grant of a Stock Option was duly authorized no later than the date on which the grant of such Stock Option was by its terms to be effective (the "*Grant Date*") by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, (B) each such grant was made in accordance with the terms of the Company Stock Plans, (C) the per share exercise price of each Stock Option was equal to the fair market value of a share of Common Stock on the applicable Grant Date and (D) each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company and disclosed in the Company's filings with the Commission in accordance with the Exchange Act and all other applicable laws. The Company's general policy is to grant Stock Options at regular quarterly meetings of the compensation committee of its board of directors with Grant Dates which are the later of the third trading day following the public announcement of the Company's financial results for the previous quarter or the date of such meeting. Except pursuant to such policy, the Company has not knowingly granted, and there is no and has been no policy or practice of the Company of granting, Stock Options prior to, or otherwise coordinate the grant of Stock Options with, the release or other public announcement of material information regarding the Company or its subsidiaries or their results of operations or prospects.

(j) The Securities have been duly authorized by the Company and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Initial Purchaser in accordance with the terms of this Agreement, will be duly and validly issued and outstanding and will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and equitable principles of general applicability, and will be entitled to the benefits of the Indenture pursuant to which such Securities are to be issued. The issuance of the Securities is not subject to any preemptive rights, rights of first refusal or similar rights.

(k) The Underlying Securities reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the

terms of the Securities, will be validly issued, fully paid and non-assessable, will be issued in compliance with all United States federal and state and foreign securities laws and the issuance of the Underlying Securities will not be subject to any preemptive rights, rights of first refusal or similar rights.

(l) The Indenture has been duly authorized by the Company, and when executed and delivered by the Company and the Trustee (assuming due authorization by the Trustee), will be a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.

(m) Each of this Agreement, the Indenture and the Securities conforms in all material respects to the description thereof in the Time of Sale Disclosure Package and the Offering Memorandum. The Common Stock conforms to all statements relating thereto contained or incorporated by reference in the Time of Sale Disclosure Package and the Offering Memorandum and such description conforms to the rights set forth in the instruments defining the same.

(n) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture and the Securities does not and will not contravene or result in a breach or violation of any of the terms or provisions of, the imposition of any lien, charge or encumbrance on any property or assets of the Company or any subsidiary or constitute a default under, any provision of the articles or by-laws (or similar organizational documents) of the Company or any subsidiary or any indenture, mortgage, deed of trust, loan agreement, license or other material agreement or instrument binding upon the Company or any subsidiary or to which any of the property or assets of the Company or any subsidiary are subject, or any law or statute or any judgment, order, rule, regulation or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary or any of their properties, and no consent, approval, authorization or order of, or qualification or filing with, any governmental body or agency or any court or regulatory authority having jurisdiction over the Company or any subsidiary is required for the performance by the Company of its obligations under this Agreement, the Indenture or the Securities or the issuance and sale of the Securities, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities.

(o) Subsequent to the dates as of which information is given in the Time of Sale Disclosure Package and the Offering Memorandum, there has not occurred any change in the capital stock (other than grants by the Company or exercises by holders pursuant to existing employee benefit plans, stock option plans or other employee compensation plans) or in the short-term or long-term borrowings of the Company or any subsidiary or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or any subsidiary (other than pursuant to existing employee benefit plans, stock option plans or other employee compensation plans), or any material adverse change, or any development involving a prospective material adverse change, in the condition (financial or otherwise), or in the results of operations, stockholders' equity, management, properties, business or prospects of Finisar Malaysia or of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Disclosure Package and the Offering Memorandum provided to prospective purchasers of the Securities.

(p) Subsequent to the dates as of which information is given in the Time of Sale Disclosure Package and the Offering Memorandum, neither the Company nor any subsidiary has (i) incurred any material liabilities or obligations, direct or contingent, (ii) entered into any material transaction not in the ordinary course of business, (iii) declared or paid any dividends or made any distribution of any kind with respect to its capital stock, or (iv) sustained any material loss or interference with its business from fire, explosion, flood, earthquake, accident or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or government or regulatory authority.

(q) The Company and each subsidiary has good and marketable title to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except such as are described in the Time of Sale Disclosure Package and the Offering Memorandum or such as do not materially affect the value of such property and do not materially interfere with the

use made and proposed to be made of such property by the Company or any subsidiary; and all assets held under lease by the Company and each subsidiary are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company and each subsidiary.

(r) Except as described in the Time of Sale Disclosure Package and the Offering Memorandum, the Company and each subsidiary carries, or are covered by, insurance in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and each subsidiary are in full force and effect; the Company and each subsidiary are in compliance with the terms of such policies in all material respects; and neither the Company nor any subsidiary has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance; there are no claims by the Company or any subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not reasonably be expected to have a Material Adverse Effect.

(s) There are no legal, governmental or regulatory proceedings pending or threatened (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) to which the Company or any subsidiary is a party or to which any of the properties of the Company or any subsidiary is subject other than proceedings accurately described in all material respects in the Time of Sale Disclosure Package and the Offering Memorandum and proceedings that if determined adversely to the Company or any subsidiary would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or to materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Securities; and, to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(t) There are no legal or governmental proceedings or contracts or other documents of a character required to be described in the Time of Sale Disclosure Package and the Offering Memorandum or, in the case of documents, to be filed as exhibits to the Company's Annual Report on Form 10-K, that are not described and filed as required. Neither the Company nor any subsidiary has knowledge that any other party to any such contract, agreement or arrangement has any intention not to render full performance as contemplated by the terms thereof; and the statements made under the captions "Summary," "The Offering," "Risk Factors" and "Plan of Distribution" in the Time of Sale Disclosure Package and the Offering Memorandum and under the captions "Item 1A. Risk Factors," "Item 3. Legal Proceedings," "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation," "Item 10. Directors, Executive Officers and Corporate Governance" and "Item 13. Certain Relationships and Related Transactions, and Director Independence" in the Company's most recent Annual Report on Form 10-K, as such disclosure has been amended by reports subsequently filed by the Company pursuant to the Exchange Act, insofar as they purport to constitute summaries of the terms of statutes, rules or regulations, legal or governmental proceedings or contracts and other documents, constitute accurate summaries of the terms of such statutes, rules and regulations, legal and governmental proceedings and contracts and other documents in all material respects.

(u) No governmental authority has issued any order preventing or suspending the trading of the Company's securities or the distribution of the Securities, and no investigation, order, inquiry or proceeding has been commenced or is pending or, to the knowledge of the Company or any subsidiary, is contemplated or threatened by any such authority.

(v) No consent, approval, authorization or filing with or order of any U.S. federal, New York, Delaware or California court or governmental agency or body having jurisdiction over the Company is required for the consummation by the Company of the transactions contemplated by this Agreement, the Indenture and the Securities or the issuance and sale of the Securities (including the Underlying Securities issuable upon conversion

thereof), except such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Initial Purchaser in the manner contemplated by this Agreement and in the Offering Memorandum or under the bylaws, rules and regulations of the Financial Industry Regulatory Authority, Inc. (the “FINRA”).

(w) No relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company, on the other hand, that is required by the Securities Act to be described pursuant to Item 404 of Regulation S-K in a registration statement to be filed with the Commission that is not so described in the Time of Sale Disclosure Package and the Offering Memorandum.

(x) The Company and each subsidiary are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(y) No labor disturbance by or dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company, is imminent that could reasonably be expected to have a Material Adverse Effect.

(z) Except as described in the Time of Sale Disclosure Package and the Offering Memorandum, the Company has no obligation to provide any material retirement, death or disability benefits to any of the present or past employees of the Company or any subsidiary, or any other person.

(aa) The Company and each subsidiary has filed all federal, state and local and foreign income, franchise and other tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due thereon, except where such failure to pay or file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and no tax deficiency has been or reasonably could be expected to be asserted or determined adversely to the Company or any subsidiary, nor does the Company have any knowledge of any tax deficiencies, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(bb) Neither the Company nor any subsidiary (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such conflict, breach, violation or default could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(cc) The Company and each subsidiary (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (“*Environmental Laws*”), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses, (iii) are in compliance with all terms and conditions of any such permit, license or approval and (iv) have not received notice of any actual or alleged violation of Environmental Laws, or of any potential liability for or other obligation concerning the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a Material Adverse Effect. Except as described in the Time of Sale Disclosure Package and the Offering Memorandum, (A) there are no proceedings that are pending, or known to be contemplated,

against the Company or any subsidiary under Environmental Laws in which a governmental authority is also a party, (B) the Company and each subsidiary are not aware of any issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of Finisar Malaysia or of the Company and its subsidiaries, taken as a whole, and (C) none of the Company or any subsidiary anticipates material capital expenditures relating to Environmental Laws.

(dd) Neither the Company nor any subsidiary has ever treated, stored, transported, disposed of, arranged for or permitted the disposal of, handled, released, or exposed any person to, any kind of toxic wastes or hazardous substances, including, but not limited to, any naturally occurring radioactive materials, brine, drilling mud, crude oil, natural gas liquids and other petroleum materials, in violation of any Environmental Laws or in a manner or to a location that could reasonably be expected to give rise to any liability under the Environmental Laws, except for any violation or liability which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ee) There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ff) Neither the Company nor any subsidiary, nor to the knowledge of the Company, any director, officer, agent, employee or other person acting on behalf of the Company or any subsidiary has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures reasonably designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(gg) The Company, each subsidiary, their affiliates, any of their respective officers and directors and, to the knowledge of the Company, any of their respective supervisors, managers, agents, or employees, has not violated and the Company has instituted and maintains policies and procedures designed to ensure continued compliance with, each of the following laws: (a) anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the FCPA, or any other law, rule or regulation of similar purposes and scope, (b) anti-money laundering laws, including but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 US. Code section 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any Executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder (and no action, suit or proceeding by or before any governmental entity involving the Company or any of its subsidiaries with respect to such laws is pending or, to the knowledge of the Company, threatened), or (c) laws and regulations imposing U.S. economic sanctions

measures, including, but not limited to, the International Emergency Economic Powers Act, the Trading with the Enemy Act, the United Nations Participation Act and the Syria Accountability and Lebanese Sovereignty Act, all as amended, and any Executive Order, directive, or regulation pursuant to the authority of any of the foregoing, including the regulations of the United States Treasury Department set forth under 31 CFR, Subtitle B, Chapter V, as amended, or any orders or licenses issued thereunder.

(hh) Neither the Company nor any subsidiary nor, to the knowledge of the Company, any director, officer or employee of the Company or any subsidiary is currently subject to any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "*Sanctions*"), nor is the Company located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the offering and sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners or other person or entity, for the purpose of financing any activities of or business with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any person of Sanctions.

(ii) The Company is not, and as of each Closing Date and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Time of Sale Disclosure Package and the Offering Memorandum, will not be, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(jj) No stamp, issue, registration, documentary, transfer or other similar taxes and duties, including interest and penalties, are payable on or in connection with the issuance and sale of the Securities by the Company or the execution and delivery of this Agreement.

(kk) Except as disclosed in the Time of Sale Disclosure Package and the Offering Memorandum, there are no outstanding guarantees or other contingent obligations of the Company or any subsidiary that could reasonably be expected to have a Material Adverse Effect.

(ll) Neither the Company nor any affiliate (as defined in Rule 501(b) of Regulation D under the Securities Act, an "*Affiliate*") of the Company has directly, or through any agent (except that the Company makes no representation or warranty as to any activity of the Initial Purchaser), (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the Securities or (ii) offered, solicited offers to buy or sold the Securities by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act.

(mm) Assuming the accuracy of the Initial Purchaser's statements in Section 5 hereof, and compliance with the "Transfer Restrictions" described in the Time of Sale Disclosure Package and the Offering Memorandum, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchaser in the manner contemplated by this Agreement to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

(nn) The Securities satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act.

(oo) Neither the issuance, sale and delivery of the Securities nor the application of the proceeds thereof by the Company as described in the Time of Sale Disclosure Package and the Offering Memorandum will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(pp) Except as disclosed in the Time of Sale Disclosure Package and the Offering Memorandum, to the Company's knowledge, the Company and the Subsidiaries own or possess, or have the right to use or can acquire on reasonable terms, all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, "*Intellectual Property*") currently employed by them in commerce, in connection with the business now operated by them, except where the failure to own or possess or otherwise be able to acquire such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and, except as otherwise described in the Time of Sale Disclosure Package and the Offering Memorandum, to the Company's knowledge, neither the Company nor any of its Subsidiaries is infringing or conflicting with asserted rights of others with respect to any of such Intellectual Property or is aware of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its Subsidiaries therein, and which infringement or conflict or invalidity or inadequacy, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a Material Adverse Effect.

(qq) The Company and each subsidiary has such permits, licenses, consents, exemptions, franchises, authorizations, certificates and other approvals (each, an "*Authorization*") of, and has made all filings with and notices to, all governmental or regulatory authorities and self-regulatory organizations and all courts and other tribunals, including, without limitation, under any applicable foreign laws, as are necessary to operate its respective properties and to conduct its business, except to the extent the failure to have any such Authorization or to make any such filing or notice would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Authorization is valid and in full force and effect and the Company and each subsidiary is in compliance, in all material respects, with all the terms and conditions thereof and with the rules and regulations of the authorities and governing bodies having jurisdiction with respect thereto; and no event has occurred (including, without limitation, the receipt of any notice from any authority or governing body) which allows or, after notice or lapse of time or both, would allow, revocation, suspension or termination of any such Authorization or results or, after notice or lapse of time or both, would result in any other material impairment of the rights of the holder of any such Authorization, except to the extent such failure to be valid and in full force and effect or to be in compliance, the occurrence of any such event or the presence of any such restriction would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(rr) Except as disclosed in the Time of Sale Disclosure Package and in the Offering Memorandum, none of the Company or any subsidiary is currently prohibited, directly or indirectly, from paying any dividends or other distributions, or from making any other distribution on its equity interest; all dividends and other distributions declared and payable upon the equity interests in the Company and each subsidiary may be converted into foreign currency that may be freely transferred out of any applicable foreign jurisdiction, and all such dividends and other distributions are not and, will not be, subject to withholding or other taxes under the laws and regulations of any applicable foreign jurisdiction and, are otherwise free and clear of any other tax, withholding or deduction in such foreign jurisdiction, in each case without the necessity of obtaining any consent in any foreign jurisdiction, except such as have been obtained.

(ss) The Company and the Subsidiaries (i) make and keep accurate books and records and (ii) maintain and have maintained effective internal control over financial reporting (as defined in Rule 13a-15 under the Exchange Act) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(tt) The Company and the Subsidiaries (i) have established and maintain disclosure controls and procedures (as defined in Rules 13a-15 under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company in the reports filed or

submitted under the Exchange Act is accumulated and communicated to management of the Company, including its principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding disclosure to be made and (iii) such disclosure controls and procedures are effective to a reasonable level of assurance to perform the functions for which they were established. The Company has utilized such disclosure controls and procedures in preparing and evaluating the disclosures in the Time of Sale Disclosure Package and in the Offering Memorandum.

(uu) Except as disclosed in the Time of Sale Disclosure Package and in the Offering Memorandum, (i) since the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by Ernst & Young LLP and the audit committee of the Board of Directors, there have been no “significant deficiencies” or “material weaknesses” (each as defined by the Public Company Accounting Oversight Board) in its internal control over financial reporting, or any fraud, whether or not material, that involves management or other employees of the Company who have a significant role in the Company’s internal controls; and (ii) since the end of the latest audited fiscal year, there has been no change in the Company’s internal control over financial reporting (whether or not remediated) that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

(vv) The financial statements included in the Time of Sale Disclosure Package and in the Offering Memorandum present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with GAAP applied on a consistent basis; and the assumptions used in preparing the pro forma financial statements included in the Time of Sale Disclosure Package and in the Offering Memorandum provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts.

(ww) As of the date of this Agreement, there is no failure on the part of the Company and any of the Company’s directors or officers, in their capacities as such, to comply with the provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission promulgated thereunder.

(xx) The section entitled “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Policies” in the Company’s most recent Annual Report on Form 10-K, as amended by reports subsequently filed by the Company pursuant to the Exchange Act, accurately and fully describes (A) the accounting policies that the Company believes are the most important in the portrayal of the Company’s financial condition and results of operations and that require management’s most difficult, subjective or complex judgments (“*Critical Accounting Policies*”); (B) the judgments and uncertainties affecting the application of the Critical Accounting Policies; and (C) the likelihood that materially different amounts would be reported under different conditions or using different assumptions and an explanation thereof. The audit committee of the Company’s board of directors and the Company’s senior management have reviewed and agreed with the selection, application and disclosure of the Critical Accounting Policies and have consulted with the Company’s independent accountants with regard to such disclosure.

(yy) There are no securities or preferred stock of or guaranteed by the Company or any subsidiary that are rated by a “nationally recognized statistical rating organization,” as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act.

(zz) Except as disclosed in the Time of Sale Disclosure Package and the Offering Memorandum, the Company (i) does not have any material lending or other relationship with any bank or lending affiliate of the Initial Purchaser and (ii) does not intend to use any of the proceeds from the sale of the Securities to repay any outstanding debt owed to any affiliate of the Initial Purchaser.

(aaa) Any third-party statistical and market-related data included in the Time of Sale Disclosure Package and the Offering Memorandum are based on or derived from sources that the Company believes

to be reliable and accurate in all material respects; and the selected operating data of the Company included in the Time of Sale Disclosure Package and the Offering Memorandum are based on or derived from the Company's internal records and are reliable and accurate in all material respects.

(bbb) The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Time of Sale Disclosure Package and the Offering Memorandum fairly presents the information called for and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

Any certificate signed by any officer of the Company and delivered to the Initial Purchaser or counsel for the Initial Purchaser in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to the matters covered thereby, to the Initial Purchaser.

Section 3. Purchase, Sale and Delivery of Securities.

(a) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell the Firm Securities to the Initial Purchaser, and the Initial Purchaser agrees to purchase from the Company, \$225,000,000 aggregate principal amount of Firm Securities at a purchase price for each Firm Security equal to 98.54% of the principal amount of the Firm Security plus accrued interest, if any, from December 16, 2013 to the date of the payment and delivery (the "*Purchase Price*").

The Firm Securities will be delivered by the Company to the account of the Initial Purchaser against payment of the purchase price therefor by wire transfer of same day funds, to an account specified by the Company, with such closing to take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, 94304, or such other location as may be mutually acceptable, at 7:00 a.m., Pacific time, on December 16, 2013, or at such other time and date as you and the Company determine pursuant to Rule 15c6-1(a) under the Exchange Act, such time and date of delivery being herein referred to as the "*First Closing Date*." Delivery of the Firm Securities shall be made by credit through full fast transfer to the accounts at The Depository Trust Company designated by the Initial Purchaser. Certificates representing the Firm Securities, will be made available for checking and packaging not later than 8:30 a.m., Pacific time, on the business day preceding the First Closing Date at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, 94304, or such other location as may be mutually acceptable.

(b) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company, with respect to \$33,750,000 aggregate principal amount of Option Securities, hereby grant to the Initial Purchaser an option to purchase all or any portion of the Option Securities at the same Purchase Price as the Firm Securities. The option granted hereunder may be exercised in whole or in part, only for the purpose of covering overallotments made in connection with the offering and distribution of the Firm Securities, at any time within 30 days after the effective date of this Agreement upon notice (confirmed in writing) by the Initial Purchaser to the Company setting forth the aggregate number of Option Securities as to which the Initial Purchaser is exercising the option, the names and denominations in which the certificates for the Option Securities are to be registered and the date and time, as determined by you, when the Option Securities are to be delivered, such time and date being herein referred to as the "*Second Closing*" and "*Second Closing Date*", respectively, and the Initial Closing Date and the Second Closing Date each sometimes being herein referred to as a "*Closing Date*"; provided, however, that the Second Closing Date shall not be earlier than the First Closing Date nor, unless waived by the Company and the Initial Purchaser, earlier than the second business day after the date on which the option shall have been exercised. No Option Securities shall be sold and delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered.

The Option Securities will be delivered by the Company to the account of the Initial Purchaser against payment of the purchase price therefor by wire transfer of same day funds payable to an account specified by the Company, with such closing to take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, 94304, or such other location as may be mutually acceptable

at 7:00 a.m., Pacific time, on the Second Closing Date. If the Initial Purchaser so elects, delivery of the Option Securities may be made by credit through full fast transfer to the account at The Depository Trust Company designated by the Initial Purchaser. Certificates representing the Option Securities, will be made available for checking and packaging not later than 8:30 a.m., Pacific time, on the business day preceding the Second Closing Date at the office of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, 94304, or such other location as may be mutually acceptable.

Section 4. Covenants of the Company. The Company further covenants and agrees with you as follows:

(a) During the period beginning on the date hereof and ending on the later of the Second Closing Date or such date as the Offering Memorandum is no longer required by law to be delivered in connection with sales by a purchaser or dealer (the “*Offering Memorandum Delivery Period*”), prior to amending or supplementing the Time of Sale Disclosure Package or the Offering Memorandum, the Company shall furnish to the Initial Purchaser for review a copy of each such proposed amendment or supplement, and the Company shall not use any such proposed amendment or supplement to which the Initial Purchaser or counsel to the Initial Purchaser reasonably objects.

(b) After the date of this Agreement, the Company shall promptly advise the Initial Purchaser in writing of any amendment or supplement to the Time of Sale Disclosure Package or the Offering Memorandum or of any order preventing the use of the Time of Sale Disclosure Package or the Offering Memorandum, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes.

(c) Until the completion of the distribution of the Securities as contemplated in this Agreement and by the Offering Memorandum, the Company will comply as far as it is able with all requirements imposed upon it by the Securities Act, as now and hereafter amended, and by the rules and regulations thereunder, as from time to time in force, and by the Exchange Act so far as necessary to permit the continuance of sales of or dealings in the Securities as contemplated by the provisions hereof, the Time of Sale Disclosure Package and the Offering Memorandum. If at any time prior to the completion of the distribution of the Securities as contemplated in this Agreement and by the Offering Memorandum, any event shall occur as a result of which, in the judgment of the Company or the Initial Purchaser, it becomes necessary to amend or supplement the Offering Memorandum (or, if the Offering Memorandum is not yet available to prospective purchasers, the Time of Sale Disclosure Package) in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or, if it is necessary at any time to amend or supplement the Offering Memorandum (or, if the Offering Memorandum is not yet available to prospective purchasers, the Time of Sale Disclosure Package) to comply with applicable law, the Company promptly will prepare an appropriate amendment or supplement to the Offering Memorandum (or, if the Offering Memorandum is not yet available to prospective purchasers, the Time of Sale Disclosure Package) so that the Offering Memorandum (or, if the Offering Memorandum is not yet available to prospective purchasers, the Time of Sale Disclosure Package) as so amended or supplemented will not contain statements that, in light of the circumstances under which they were made, are misleading, or so that the Offering Memorandum (or, if the Offering Memorandum is not yet available to prospective purchasers, the Time of Sale Disclosure Package) will comply with applicable law.

(d) The Company shall take or cause to be taken all necessary action to qualify the Securities for sale under the securities laws of such jurisdictions as you reasonably designate and to continue such qualifications in effect so long as required for the distribution of the Securities, except that the Company shall not be required in connection therewith to (i) qualify as a foreign corporation in any jurisdiction in which it would not otherwise be required to so qualify, (ii) to execute a general consent to service of process in any jurisdiction or (iii) to subject itself to taxation in any jurisdiction in which it would not otherwise be subject.

(e) The Company will furnish to the Initial Purchaser and counsel for the Initial Purchaser copies of each Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Offering Memorandum, the Pricing Term Sheet, and all amendments and supplements to such documents, in each case as soon as available and in such quantities as you may from time to time reasonably request.

(f) During a period of one year commencing with the date hereof, the Company will furnish to the Initial Purchaser, and to each purchaser who may so request in writing, copies of all periodic and special reports furnished to the stockholders of the Company and all public information, documents and reports filed with the Commission, the FINRA, The Nasdaq Global Select Market or any securities exchange (other than any such information, documents and reports that are filed with the Commission electronically via EDGAR or any successor system).

(g) The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid (A) all expenses incurred in connection with the delivery to the Initial Purchaser of the Securities, (B) all expenses and fees (including, without limitation, fees and expenses of the Company's accountants and counsel but, except as otherwise provided below, not including fees of the Initial Purchaser's counsel) in connection with the preparation, printing, filing, delivery, and shipping of the Securities, each Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Final Offering Memorandum and any amendment thereof or supplement thereto, and the printing, delivery, and shipping of this Agreement and other offering documents, including any Blue Sky Memoranda (covering the states and other applicable jurisdictions), (C) all filing fees and fees and disbursements of the Initial Purchaser's counsel incurred in connection with the qualification of the Securities for offering and sale by the Initial Purchaser or by dealers under the securities or blue sky laws of the states, provinces and other jurisdictions which you shall designate, (D) all filing fees and fees and disbursements incurred with respect to any requirements of the FINRA, (E) the fees and expenses of any transfer agent, trustee or registrar, (F) listing fees, if any, with respect to any filing of an additional share listing application for the Underlying Securities with The Nasdaq Global Select Market, (G) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (H) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Initial Purchasers caused by a breach of the representation contained in Section 2(a), (b) or (c), and (I) all other costs and expenses incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein. If this Agreement is terminated by the Initial Purchaser pursuant to Section 9 hereof or if the sale of the Securities provided for herein is not consummated by reason of any failure, refusal or inability on the part of the Company to perform any agreement on its part to be performed, or because any other condition of the Initial Purchaser's obligations hereunder required to be fulfilled by the Company is not fulfilled, the Company will reimburse the Initial Purchaser for all out-of-pocket disbursements (including but not limited to reasonable fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges) incurred by the Initial Purchaser in connection with its investigation, preparing to market and marketing the Securities or in contemplation of performing their obligations hereunder.

(h) The Company will apply the net proceeds from the sale of the Securities to be sold by it hereunder for the purposes set forth in the Time of Sale Disclosure Package and in the Offering Memorandum.

(i) The Company will not, without the prior written consent of the Initial Purchaser, from the date of execution of this Agreement and continuing to and including the date 90 days after the date of the Offering Memorandum (the "*Lock-Up Period*") (A) issue, offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or lend or otherwise dispose of or transfer, directly or indirectly, any Common Stock or any securities convertible into or exchangeable or exercisable for or repayable with Common Stock, or file any registration statement under the Securities Act with respect to any of the foregoing, or (B) enter into any swap, hedge, derivative or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of Common Stock or any securities convertible into or exchangeable for or repayable with Common Stock, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, except that the Company may, without such consent, (i) issue and sell the

Securities offered hereby or the Common Stock to be issued upon conversion thereof, and (ii) grant options or issue and sell Common Stock pursuant to existing or, to the extent described in the Time of Sale Disclosure Package or the Offering Memorandum, contemplated employee benefit plans, stock option plans or other employee compensation benefit plans or pursuant to currently outstanding options, warrants or rights existing on the date hereof and referred to in the Time of Sale Disclosure Package and the Offering Memorandum. Without the prior written consent of the Initial Purchaser, the Company agrees not to accelerate the vesting of any option or warrant or the lapse of any repurchase right prior to the expiration of the Lock-Up Period. If (1) during the period that begins on the date that is 18 calendar days before the last day of the Lock-Up Period and ends on the last day of the Lock-Up Period, (a) the Company issues an earnings release, (b) the Company publicly announces material news or (c) a material event relating to the Company occurs; or (2) prior to the expiration of the Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the Lock-Up Period, then the restrictions in this Agreement, unless otherwise waived by the Initial Purchaser in writing, shall continue to apply until the expiration of the date that is 18 calendar days after the date on which (a) the Company issues the earnings release, (b) the Company publicly announces material news or (c) a material event relating to the Company occurs. The Company will provide the Initial Purchaser and each shareholder subject to the Lock-Up Agreement (as defined below) with prior notice of any such announcement that may give rise to the extension of the Lock-Up Period.

(j) The Company has caused to be delivered to you prior to the date of this Agreement a letter from each of the Company's directors and officers stating that such person agrees that, subject to certain exceptions, such person will not, without your prior written consent, offer for sale, sell, contract to sell or otherwise dispose of, as set forth in such letter, any Common Stock or rights to purchase Common Stock, for a period of 90 days after the date of this Agreement, subject to extension in certain circumstances (the "*Lock-Up Agreement*"). The Company will use its reasonable best efforts to assist the Initial Purchaser in enforcing the terms of each Lock-Up Agreement and will issue stop-transfer instructions to the transfer agent for the Common Stock with respect to any transaction or contemplated transaction that would constitute a breach of or default under the applicable Lock-Up Agreement.

(k) Neither the Company nor any Affiliate has taken, nor will it take, directly or indirectly, any action designed to or which might reasonably be expected to cause or result in, or which has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or result in a violation of Regulation M under the Exchange Act.

(l) The Company will not incur any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(m) Until the expiration of one year after the completion of the distribution of the Securities by the Initial Purchaser as contemplated in this Agreement and the Offering Memorandum, the Company and the Subsidiaries will maintain such controls and other procedures, including without limitation those required by Sections 302 and 906 of the Sarbanes-Oxley Act and the applicable regulations thereunder, that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and its principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure, to ensure that material information relating to Company, including its subsidiaries, is made known to them by others within those entities.

(n) Until the expiration of one year after the completion of the distribution of the Securities by the Initial Purchaser as contemplated in this Agreement and the Offering Memorandum, the Company and the Subsidiaries will comply in all material respects with the effective applicable provisions of the Sarbanes-Oxley Act.

(o) The Company will use its reasonable best efforts to assure that the Option Securities shall have the same CUSIP number as the CUSIP number assigned to the Firm Securities.

(p) The Company has submitted an additional share listing application for the Underlying Securities with the Nasdaq Global Select Market prior to the date of this Agreement and will use its reasonable best efforts to have the Underlying Securities approved by the Nasdaq Global Select Market for listing as of the First Closing Date, subject only to official notice of issuance.

(q) During the Offering Memorandum Delivery Period, the Company will file on a timely basis with the Commission such periodic and special reports as required by the Exchange Act and the rules and regulations thereunder. The Company shall use its reasonable best efforts to take all steps necessary or appropriate to facilitate the distribution of the Securities by the Initial Purchaser pursuant to Rule 144A as shall be reasonably requested by the Initial Purchaser, including, without limitation, participation by the Company's executive officers in the preparation of materials for investor presentations and participation in investor meetings and roadshow presentations reasonably requested by the Initial Purchaser.

(r) The Company shall issue a press release announcing the pricing of the offering of the Securities in the form reasonably satisfactory to the Initial Purchaser and its counsel and in compliance with Rule 135(c) no later than 6:15 p.m., Pacific time, on December 10, 2013.

(s) The Company will at all times reserve and keep available, free of any preemptive rights, co-sale rights, registration rights, rights of first refusal, other rights to subscribe for or purchase securities or other rights of security holders similar to any of the foregoing, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of the Securities into the Underlying Securities, the full number of shares of Underlying Securities issuable upon the conversion of all outstanding Securities.

(t) The Company shall take all actions necessary to cause the Securities to be eligible for clearance and settlement and "book-entry" transfer through DTC and the Company agrees to comply with all agreements set forth in the representation letters of the Company to DTC relating to the approval of the Securities by DTC for "book-entry" transfer.

(u) The Company will indemnify and hold the Initial Purchaser harmless against any documentary, stamp or similar issuance or transfer taxes, duties or fees and any transaction levies, commissions or brokerage charges, including any interest and penalties, which are or may be required to be paid in connection with the creation, allotment, issuance, offer and distribution of the Securities and the execution and delivery of this Agreement, the Indenture and the Securities; provided, however, that the Company shall not be responsible for any such taxes, duties, fees, levies or charges that arise as a result of the distribution of the Securities by the Initial Purchaser in a manner other than that as is customary in such transactions.

Section 5. Subsequent Offers and Resales of the Securities.

(a) The Initial Purchaser and the Company each hereby agree with respect to itself in connection with the offer and sale of the Securities:

(1) Offers and sales of the Securities shall be made to such persons and in such manner as is contemplated by the Offering Memorandum.

(2) No general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) will be used in the United States in connection with the offering or sale of the Securities.

(3) The transfer restrictions and the other provisions set forth in the Offering Memorandum under the caption "Transfer Restrictions," including the legend required thereby, shall apply to the Securities except as otherwise agreed by the Company and the Initial Purchaser.

(b) The Company covenants with the Initial Purchaser as follows:

(1) The Company agrees that it will not, and will cause its Affiliates not to, directly or indirectly, solicit any offer to buy, sell or make any offer or sale of, or otherwise negotiate in respect of, securities of the Company of any class if, as a result of the doctrine of “integration” referred to in Rule 502 under the Securities Act, such offer or sale would render invalid (for the purpose of (i) the sale of the offered Securities by the Company to the Initial Purchaser, (ii) the resale of the offered Securities by the Initial Purchaser to subsequent purchasers or (iii) the resale of the offered Securities by such subsequent purchasers to others) the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof or by Rule 144A thereunder or otherwise.

(2) Until the expiration of one year after the original issuance of the offered Securities, the Company will not, and will cause its Affiliates not to, resell any offered Securities which are “restricted securities” (as such term is defined under Rule 144(a)(3) under the Securities Act), whether as beneficial owner or otherwise (except as agent acting as a securities broker on behalf of and for the account of customers in the ordinary course of business in unsolicited broker’s transactions).

(3) To the extent that any Securities or Underlying Securities remain outstanding and are “restricted securities” within the meaning of Rule 144 under the Securities Act, during the one year period following the First Closing Date (or, if later, the Second Closing Date) and during the one-year period following the sale of any such Security or Underlying Security, as the case may be, by an Affiliate of the Company (for purposes of this Section 5 only, as such term is defined in Rule 144(a)(1) under the Securities Act), the Company will make available, upon request, to any seller of such Securities or Underlying Securities, as the case may be, the information specified in Rule 144A(d)(4) under the Securities Act, unless the Company is then subject to and in compliance with Section 13 or 15(d) of the Exchange Act.

(c) The Initial Purchaser covenants with the Company as follows:

(1) The Initial Purchaser represents and warrants to, and agrees with, the Company that it is a Qualified Institutional Buyer within the meaning of Rule 144A under the Securities Act (a “*Qualified Institutional Buyer*”) and an “accredited investor” within the meaning of Rule 501(a) under the Securities Act (an “*Accredited Investor*”).

(2) The Initial Purchaser represents and warrants to, and agrees with, the Company that it will only sell the Securities to persons whom the Initial Purchaser reasonably believes are Qualified Institutional Buyers.

(3) The Initial Purchaser will take reasonable steps to inform, and cause each of its U.S. Affiliates to take reasonable steps to inform, persons acquiring Securities from such Initial Purchaser or such affiliate, as the case may be, in the United States that the Securities (A) have not been and will not be registered under the Securities Act, (B) are being sold to them without registration under the Securities Act in reliance on Rule 144A or in accordance with another exemption from registration under the Securities Act, as the case may be, and (C) may not be offered, sold or otherwise transferred except (1) to the Company, (2) outside the United States in accordance with Regulation S under the Securities Act and in compliance with the securities laws of such non-United States jurisdiction, or (3) inside the United States in accordance with (x) Rule 144A to a person whom the seller reasonably believes is a Qualified Institutional Buyer that is purchasing such Securities for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the offer, sale or transfer is being made in reliance on Rule 144A or (y) pursuant to another available exemption from registration under the Securities Act.

Section 6. Conditions of Initial Purchaser’s Obligations. The obligations of the Initial Purchaser hereunder to purchase the Securities is subject to the accuracy, as of the date hereof and at each of the First Closing Date and the Second Closing Date (as if made at such Closing Date), of and compliance with all representations, warranties and agreements of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Initial Purchaser shall not have advised the Company that the Time of Sale Disclosure Package or the Offering Memorandum, or any amendment thereof or supplement thereto, or any Supplemental Offering Material, contains an untrue statement of fact which, in your opinion, is material, or omits to state a fact which, in your opinion, is material and is required to be stated therein or necessary to make the statements therein not misleading.

(b) Except as contemplated in the Time of Sale Disclosure Package and in the Offering Memorandum, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, neither the Company nor any subsidiary shall have (i) incurred any material liabilities or obligations, direct or contingent, and there shall not have been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the grant of options or the issuance of shares under the Company's employee stock plans or upon the exercise of outstanding options, warrants or the conversion of outstanding convertible securities), or any material change in the short-term or long-term debt of the Company, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or any subsidiary (other than pursuant to existing employee benefit plans, stock option plans or other employee compensation plans), or any material adverse change or any development involving a prospective material adverse change (whether or not arising in the ordinary course of business) in the condition (financial or otherwise), or in the results of operations, stockholders' equity, management, properties, business or prospects of Finisar Malaysia or of the Company and its subsidiaries, taken as a whole, (ii) entered into any material transaction not in the ordinary course of business, (iii) declared or paid any dividends or made any distribution of any kind with respect to its capital stock, or (iv) sustained any loss or interference with its business from fire, explosion, flood, earthquake, accident or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or government or regulatory authority, the effect of which, in any such case described above, in your judgment, makes it impractical or inadvisable to offer or deliver the Securities on the terms and in the manner contemplated in the Time of Sale Disclosure Package and in the Offering Memorandum.

(c) On each Closing Date, there shall have been furnished to you, as the Initial Purchaser, the opinions of each of:

(1) DLA Piper LLP (US), counsel for the Company, dated such Closing Date and addressed to you, to the effect set forth on Exhibit A hereto; and

(2) Shearn Delamore & Co., Malaysian counsel for the Company, dated such Closing Date and addressed to you, to the effect set forth on Exhibit B hereto.

(d) On each Closing Date, there shall have been furnished to you, as the Initial Purchaser, such opinions from Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel for the Initial Purchaser, dated such Closing Date and addressed to you, with respect to such matters as you reasonably may request, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters.

(e) On the date hereof, Ernst & Young LLP shall have furnished to you, as the Initial Purchaser, a letter dated as of the date hereof in form and substance reasonably satisfactory to the Initial Purchaser. On each Closing Date you, as the Initial Purchaser, shall have received a letter of Ernst & Young LLP, dated such Closing Date and addressed to you, confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the rules and regulations thereunder and are in compliance with the applicable requirements relating to the qualifications of accountants under Rule 2-01 of Regulation S-X of the Commission, and stating, as of the date of such letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Time of Sale Disclosure Package, as of a date not prior to the date hereof or more than two days prior to the date of such letter), the conclusions and findings of said firm with respect to the financial information and other matters covered by its letter delivered to you concurrently with the execution of this Agreement, and the effect of the letter so to be delivered on such Closing Date shall be to confirm the conclusions and findings set forth in such prior letter.

(f) On each Closing Date, there shall have been furnished to you, as the Initial Purchaser, a certificate dated such Closing Date and addressed to you, signed by the chairman of the board or the chief executive officer of the Company and by the chief financial officer of the Company, to the effect that:

(1) The representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date.

(2) The signers of said certificate have carefully examined the Time of Sale Disclosure Package and the Offering Memorandum, and any amendments thereof or supplements thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Time of Sale Disclosure Package and the Offering Memorandum), and:

(A) the Offering Memorandum, as amended or supplemented, does not include and did not include as of its date, or such Closing Date, any untrue statement of a material fact or omit to state and did not omit to state as of its date, or such Closing Date, a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(B) neither (1) the Time of Sale Disclosure Package nor (2) Supplemental Offering Materials, when considered together with the Time of Sale Disclosure Package, include, nor included as of the Time of Sale any untrue statement of a material fact or omits, or omitted as of the Time of Sale, to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(C) since the Time of Sale, there has occurred no event required to be set forth in an amended or supplemented offering memorandum which has not been so set forth, and there has been no document required to be filed under the Exchange Act that upon such filing would be deemed to be incorporated by reference into the Time of Sale Disclosure Package or into the Offering Memorandum that has not been so filed;

(D) subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, neither the Company nor any subsidiary has (i) incurred any material liabilities or obligations, direct or contingent, and except as disclosed in the Time of Sale Disclosure Package and in the Offering Memorandum, there has not been any change in the capital stock (other than a change in the number of outstanding Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants), or any material change in the short term or long term debt, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock, of the Company or any subsidiary (other than pursuant to existing employee benefit plans, stock option plans or other employee compensation plans), or any material adverse change or any development involving a prospective material adverse change (whether or not arising in the ordinary course of business) in the condition (financial or otherwise), or in the results of operations, stockholders' equity, management, properties, business or prospects of Finisar Malaysia or of the Company and its subsidiaries, taken as a whole, (ii) entered into any material transactions not in the ordinary course of business, (iii) declared or paid any dividends or made any distribution of any kind with respect to its capital stock or (iv) sustained any loss or interference with its business from fire, explosion, flood, earthquake, accident or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or government or regulatory authority; and

(E) except as stated in the Time of Sale Disclosure Package and in the Offering Memorandum, there is not pending, or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding to which the Company or any subsidiary is a party before or by any court or governmental agency, authority or body, or any arbitrator, which would reasonably be expected to have a Material Adverse Effect.

(g) The Company shall have furnished to you and counsel for the Initial Purchaser such additional documents, certificates and evidence as you or they may have reasonably requested.

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are satisfactory in form and substance to you and counsel for the Initial Purchaser. The Company will furnish you with such conformed copies of such opinions, certificates, letters and other documents as you shall reasonably request.

Section 7. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless the Initial Purchaser against any losses, claims, damages or liabilities to which the Initial Purchaser may become subject, under the Securities Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Offering Memorandum, or any amendment or supplement thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Offering Memorandum), any Pricing Term Sheet or Supplemental Offering Materials or in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities (“Marketing Materials”), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Initial Purchaser for any legal or other expenses reasonably incurred by it in connection with investigating or defending against such loss, claim, damage, liability or action as such expenses are incurred; or (ii) in whole or in part upon any inaccuracy in the representations and warranties of the Company contained herein; or (iii) in whole or in part upon any failure of the Company to perform its obligations hereunder or under law; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Offering Memorandum, or any such amendment or supplement, any Pricing Term Sheet or Supplemental Offering Materials or in any Marketing Materials, in reliance upon and in conformity with written information furnished to the Company by you specifically for use in the preparation thereof; it being understood and agreed that the only such information furnished by you consists of the information described as such in Section 7(f) hereof.

(b) The Initial Purchaser will indemnify and hold harmless the Company against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Initial Purchaser, such consent not to be unreasonably withheld), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Offering Memorandum, or any amendment or supplement thereto or any Pricing Term Sheet, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in any Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Offering Memorandum, or any amendment or supplement thereto, or any Pricing Term Sheet in reliance upon and in conformity with written information furnished to the Company by you, specifically for use in the preparation thereof (it being understood and agreed that the only such information furnished by you consists of the information described as such in Section 7(f) hereof), and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending against any such loss, claim, damage, liability or action.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability

that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure (through the forfeiture of substantive rights or defenses). In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation.

The indemnifying party under this Section 7 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 7, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (a) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 7 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Initial Purchaser on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Initial Purchaser on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Initial Purchaser on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total discounts and commissions received by the Initial Purchaser, in each case as set forth in the Offering Memorandum or in this Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Initial Purchaser and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Initial Purchaser agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this subsection (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the discounts and commissions received by the Initial Purchaser exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Company under this Section 7 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Initial Purchaser within the meaning of the Securities Act; and the obligations of the Initial Purchaser under this Section 7 shall be in addition to any liability that the Initial Purchaser may otherwise have and shall extend, upon the same terms and conditions, to each director of the Company, to each officer of the Company and to each person, if any, who controls the Company within the meaning of the Securities Act.

(f) The Initial Purchaser confirms and the Company acknowledges that the statements with respect to the offering of the Securities by the Initial Purchaser set forth in the third sentence of the first paragraph under the heading “New Issue of Notes” and in the first paragraph under the heading “Price Stabilization, Short Positions” under the section entitled “Plan of Distribution” in the Time of Sale Disclosure Package and in the Offering Memorandum are correct and constitute the only information concerning such Initial Purchaser furnished in writing to the Company by or on behalf of the Initial Purchaser specifically for inclusion in any Preliminary Offering Memorandum, the Time of Sale Disclosure Package, the Offering Memorandum or any Pricing Term Sheet.

Section 8. Representations and Agreements to Survive Delivery. All representations, warranties, and agreements of the Initial Purchaser and the Company herein or in certificates delivered pursuant hereto, including but not limited to the agreements of the Initial Purchaser and the Company contained in Section 7 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Initial Purchaser or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Initial Purchaser hereunder.

Section 9. Termination of this Agreement.

(a) You, as the Initial Purchaser, shall have the right to terminate this Agreement by giving notice to the Company as hereinafter specified at any time at or prior to the First Closing Date, and the option referred to in Section 3(b) hereof, if exercised, may be cancelled at any time prior to the Second Closing Date, if (i) the Company shall have failed, refused or been unable, at or prior to such Closing Date, to perform any agreement on its part to be performed hereunder, (ii) any condition of the Initial Purchaser’s obligations hereunder is not fulfilled or if there has been, in your judgment, since the time of execution of this Agreement or since the respective dates as of which information is given in the Time of Sale Disclosure Package or the Offering Memorandum, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, (iii) trading in the Company’s Common Stock shall have been suspended by the Commission or the Nasdaq Global Select Market or trading in securities generally on the Nasdaq Stock Market or New York Stock Exchange shall have been suspended, (iv) minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required, on the Nasdaq Stock Market or New York Stock Exchange, by such exchange or by order of the Commission or any other governmental authority having jurisdiction, (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, (vi) a banking moratorium shall have been declared by federal or state or local authorities in the United States or Malaysia, or (vii) there shall have occurred any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States or Malaysia, any declaration by the United States or Malaysia of a national emergency or war, any change in financial markets, any substantial change or development involving a prospective substantial change in United States or international political, financial or economic conditions, or any other calamity or crisis that, in your judgment, is material and adverse and makes it impractical or inadvisable to proceed with the completion of the sale of and payment for the Securities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 4(g) and Section 7 hereof shall at all times be effective and shall survive such termination.

(b) If you elect to terminate this Agreement as provided in this Section 9, the Company shall be notified promptly by you by telephone, confirmed by letter.

Section 10. Default by the Company.

(a) If the Company shall fail at the First Closing Date to sell and deliver the aggregate principal amount of Securities which it is obligated to sell hereunder, this Agreement shall terminate without any liability on the part of the Initial Purchaser.

(b) No action taken pursuant to this Section 10 shall relieve the Company so defaulting from liability, if any, in respect of such default.

Section 11. Notices. Except as otherwise provided herein, all communications hereunder shall be in writing and, if to the Initial Purchaser, shall be mailed, delivered or telecopied to the Initial Purchaser at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730), and with a copy to Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304, Attention: John A. Fore, Esq. (facsimile: (650) 493-6811), if to the Company, shall be mailed, delivered or telecopied to it at 1389 Moffett Park Drive, Sunnyvale, California 94089, Attention: Chief Financial Officer (facsimile: (408) 541-4154, with a copy to DLA Piper LLP (US), 2000 University Avenue, East Palo Alto, California 94303, Attention: Dennis C. Sullivan, Esq. (facsimile: (650) 687-1200). Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

Section 12 .Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 7. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Initial Purchaser and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. The term “successors and assigns” as herein used shall not include any purchaser, as such purchaser, of any of the Securities from the Initial Purchaser.

Section 13. Research Analyst Independence. The Company acknowledges that the Initial Purchaser’s research analysts and research departments are required to be independent from their investment banking divisions and are subject to certain regulations and internal policies, and that the Initial Purchaser’s research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Initial Purchaser with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by the Initial Purchaser’s investment banking divisions. The Company acknowledges that the Initial Purchaser is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

Section 14. Absence of Fiduciary Relationship. The Company acknowledges and agrees that: (a) the Initial Purchaser has been retained solely to act as an initial purchaser in connection with the sale of the Securities and that no fiduciary, advisory or agency relationship between the Company and the Initial Purchaser has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Initial Purchaser has advised or is advising the Company on other matters; (b) the price and other terms of the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Initial Purchaser and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Initial Purchaser and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Initial Purchaser has no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that the Initial Purchaser is acting, in

respect of the transactions contemplated by this Agreement, solely for the benefit of the Initial Purchaser and not on behalf of the Company; (e) it waives, to the fullest extent permitted by law, any claims it may have against the Initial Purchaser for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any of the transactions contemplated by this Agreement and agrees, to the fullest extent permitted by law, that the Initial Purchaser shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

Section 15. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

Section 16. General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Section 17. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and the Initial Purchaser hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 18. Governing Law. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

Section 19. Time. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

Section 20. Counterparts. This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

[Signature Page Follows]

Please sign and return to the Company the enclosed duplicates of this letter whereupon this letter will become a binding agreement between the Company and the Initial Purchaser in accordance with its terms.

Very truly yours,

FINISAR CORPORATION

By: /s/ Jerry S Rawls

Name: Jerry S. Rawls

Title: Executive Chairman

CONFIRMED AND ACCEPTED,
for itself as of the date first above written:

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By:
Authorized Signatory

SCHEDULE A
Pricing Term Sheet

Pricing term sheet dated December 10, 2013
to Preliminary Offering Memorandum dated December 9, 2013
(the "Preliminary Offering Memorandum")

Finisar Corporation
\$225,000,000
0.50% Convertible Senior Notes Due 2033

The information in this pricing term sheet relates only to the offering of \$225,000,000 aggregate principal amount of 0.50% Convertible Senior Notes by Finisar Corporation and should be read together with the Preliminary Offering Memorandum and supersedes the information in the Preliminary Offering Memorandum to the extent inconsistent with the information in the Preliminary Offering Memorandum. Terms used in this pricing term sheet but not defined herein have the respective meanings given to them in the Preliminary Offering Memorandum.

Issuer:	Finisar Corporation
Ticker/Exchange for Common Stock:	FNSR/ NASDAQ Global Select Market ("NASDAQ").
Title of Securities:	0.50% Convertible Senior Notes due 2033 (the "notes").
Aggregate Principal Amount Offered:	\$225,000,000 aggregate principal amount of notes (excluding the initial purchasers' option to purchase up to \$33,750,000 of additional aggregate principal amount of notes solely to cover overallotments, if any).
Use of Proceeds of the Offering:	The Issuer estimates that the net proceeds from this offering will be approximately \$221,592,500 (or approximately \$254,920,625 if the initial purchaser exercises its over-allotment option in full), after deducting the initial purchaser's discount and estimated expenses payable by the Issuer. The Issuer intends to use the net proceeds from this offering for general corporate purposes, including working capital. The Issuer may use a portion of the net proceeds to acquire complementary businesses, products or technologies, although the Issuer has no present commitments with respect to any such acquisitions. The Issuer's management will have significant discretion in applying the net proceeds of this offering. Pending such uses, the Issuer will invest the net proceeds in short-term interest bearing securities or bank deposits.
Maturity:	The notes will mature on December 15, 2033, unless earlier purchased by the Issuer or converted.
Annual Interest Rate:	0.50% per annum.
Interest Payment Dates:	Interest will accrue from December 16, 2013, and will be payable semiannually in arrears on June 15 and December 15 of each year, beginning on June 15, 2014.
Issue Price:	100%, plus accrued interest, if any, from December 16, 2013.
Closing Stock Price:	\$21.56 on NASDAQ as of December 10, 2013.
Conversion Premium:	Approximately 40% above the Closing Stock Price.
Initial Conversion Price:	Approximately \$30.18 per share of the Issuer's common stock.
Initial Conversion Rate:	33.1301 shares of the Issuer's common stock per \$1,000 principal amount of notes.
Redemption at the Option of the Issuer:	The Issuer may redeem the notes in whole or in part on or after December 22, 2018 at a redemption price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest to, but excluding, the redemption date.
Repurchase at the Option of the Holder:	Holder will have the option to require the Issuer to redeem for cash any notes held by them on December 15, 2018, December 15, 2023, and December 15, 2028 at a redemption price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest to, but excluding, the redemption date.
Sole Bookrunner:	Merrill Lynch, Pierce, Fenner & Smith Incorporated
Trade Date:	December 10, 2013.
Expected Settlement Date:	December 16, 2013.
CUSIP Number:	31787A AL5
ISIN Number:	US31787AAL52

CAPITALIZATION

The following table sets forth the Issuer's cash and cash equivalents, 5.0% Convertible Senior Notes due 2029 and capitalization as of October 27, 2013:

- on an actual basis; and
- as adjusted to reflect the sale of the notes offered hereby (after deducting the initial purchaser's discount and estimated offering expenses payable by the Issuer, and assuming that the initial purchaser does not exercise its over-allotment option to purchase up to \$33,750,000 additional aggregate principal amount of the notes).

You should read the table in conjunction with the section of the Preliminary Offering Memorandum under the caption "Use of Proceeds" as well as the Issuer's "Management's Discussion and Analysis of Financial Condition and Results of Operations" and consolidated financial statements and other financial information included or incorporated by reference in the Preliminary Offering Memorandum.

	Actual	As Adjusted
	(in thousands, except share data)	
Cash and cash equivalents	\$ 316,488	\$ 538,081
5.0% Convertible Senior Notes due 2029(1)	\$ 40,015	\$ 40,015
Long-term Debt:		
Notes offered hereby(1)	—	225,000
Stockholders' equity:		
Preferred stock, \$0.001 par value; 5,000,000 shares authorized, no shares issued or outstanding	—	—
Common stock, \$0.001 par value, 750,000,000 shares authorized, 96,111,318 shares issued and outstanding, actual and as adjusted(2)	96	96
Additional paid-in capital(1)	2,377,198	2,377,198
Accumulated other comprehensive income	27,316	27,316
Accumulated deficit	(1,515,984)	(1,515,984)
Non-controlling interest	5,707	5,707
Total stockholders' equity	894,333	894,333
Total capitalization(3)	\$ 894,333	\$ 1,119,333

(1) In accordance with ASC 470-20, convertible debt that may be wholly or partially settled in cash is required to be separated into a liability component and an equity component, such that interest expense reflects the issuer's nonconvertible debt interest rate. Upon issuance, a debt discount is recognized as a decrease in debt and an increase in equity. The debt component accretes up to the principal amount over the expected term of the debt. ASC 470-20 does not affect the actual amount that the Issuer is required to repay, and the amount shown in the table above for the notes is the aggregate principal amount of the notes without reflecting the debt discount or fees and expense that the Issuer is required to recognize or the increase in additional paid-in capital on its consolidated balance sheet.

(2) The number of shares outstanding as of October 27, 2013 does not include the following additional shares:

- 3,232,808 shares of common stock issuable upon exercise of options outstanding at October 27, 2013 under the Issuer's stock option plans, with a weighted average exercise price of \$13.61 per share, and an additional 15,126,029 shares reserved for issuance under the Issuer's employee stock plans as of October 27, 2013;
- 1,043,286 shares of common stock reserved for issuance under the Issuer's 2009 Employee Stock Purchase Plan;
- 3,748,478 shares of common stock issuable upon conversion of the Issuer's 5.0% Convertible Senior Notes due 2029; and
- the shares of common stock issuable upon conversion of the notes offered hereby.

(3) Total capitalization represents the sum of long-term debt and stockholders' equity. The outstanding balance of the Issuer's 5.0% Convertible Senior Notes due 2029 is not included in capitalization as the balance was classified as short-term debt as of October 27, 2013.

Adjustment to Conversion Rate Upon a Conversion in Connection With a Make-Whole Fundamental Change:

The following table sets forth the stock prices and effective dates and the number of additional shares by which the conversion rate will be increased for a holder that converts a note in connection with a make-whole fundamental change having such effective date and stock price:

Effective Date	Stock Price											
	<u>\$21.56</u>	<u>\$22.50</u>	<u>\$25.00</u>	<u>\$30.18</u>	<u>\$35.00</u>	<u>\$40.00</u>	<u>\$50.00</u>	<u>\$60.00</u>	<u>\$70.00</u>	<u>\$80.00</u>	<u>\$90.00</u>	<u>\$100.00</u>
December 16, 2013	13.252	12.1492	9.7408	6.3969	4.4847	3.1873	1.7118	0.9705	0.5674	0.3344	0.1939	0.1066
December 15, 2014	13.252	12.593	9.9792	6.384	4.3616	3.0166	1.5324	0.8217	0.4527	0.249	0.1316	0.0622
December 15, 2015	13.252	12.7524	9.9311	6.1032	4.0051	2.6513	1.231	0.6012	0.2983	0.1434	0.0613	0.0242
December 15, 2016	13.252	12.4837	9.4452	5.4145	3.3041	2.018	0.7902	0.3206	0.1253	0.0455	0.012	0.0005
December 15, 2017	13.252	11.6511	8.3097	4.0723	2.0795	1.0321	0.2541	0.0583	0.0102	—	—	—
December 22, 2018	13.252	11.3143	6.8699	—	—	—	—	—	—	—	—	—

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- if the stock price is between two stock prices listed in the table or the effective date is between two effective dates listed in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year.
- if the stock price is greater than \$100.00 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.
- if the stock price is less than \$21.56 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the conversion rate exceed 46.3821 shares per \$1,000 principal amount of notes, subject to adjustments in the same manner as the conversion rate as set forth in the Preliminary Offering Memorandum under “Description of Notes-Conversion Rights-Conversion Rate Adjustments.”

This communication is intended for the sole use of the person to whom it is provided by the sender. This material is confidential and is for your information only and is not intended to be used by anyone other than you. This information does not purport to be a complete description of the notes or the offering.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy securities nor shall there be any sale of these securities in any state in which such solicitation or sale would be unlawful prior to registration or qualification of these securities under the laws of any such state.

Neither the notes nor any shares of common stock issuable upon conversion of the notes have been registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any jurisdiction. Unless they are registered, the notes and any shares of common stock issuable upon conversion of the notes may be offered only in transactions that are exempt from registration under the Securities Act and the securities laws of any other jurisdiction. Accordingly, the notes are being offered and sold only to “qualified institutional buyers” (as defined in Rule 144A under the Securities Act). For further details about eligible offerees and resale restrictions, see the section of the Preliminary Offering Memorandum captioned “Notice to Investors.”

A copy of the final offering memorandum for the offering of the notes may be obtained by contacting: BofA Merrill Lynch, 222 Broadway, New York, NY 10038, Attention: Prospectus Department, email dg.prospectus_requests@baml.com.

ANY DISCLAIMER OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

**OPINION OF DLA PIPER LLP (US),
COUNSEL FOR THE COMPANY**

The opinion of DLA Piper LLP (US), counsel for the Company, to be delivered pursuant to Section 6(c)(1) of the Agreement shall be to the effect that:

A. The Company has been duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware and is duly qualified to do business as a foreign corporation, and is in good standing, in the States of California, Pennsylvania and Texas; and has the corporate power to own and lease the properties it purports to own and lease and to conduct the business in which it is engaged as described in the Time of Sale Disclosure Package, the Offering Memorandum and the Incorporated Documents.

B. The Company has all necessary corporate power and authority to execute and deliver the Purchase Agreement, the Indenture and the Securities and to perform its obligations thereunder.

C. The execution and delivery of the Purchase Agreement, the Indenture and the Securities by the Company and the performance of its obligations thereunder have been duly authorized by all necessary corporate action on the part of the Company.

D. The Purchase Agreement has been duly executed and delivered by the Company.

E. The Securities have been duly authorized and executed by the Company and, when authenticated by the Trustee in accordance with the Indenture and paid for as provided in the Purchase Agreement, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Indenture.

F. The shares of Common Stock initially issuable upon conversion of the Securities being delivered on the date hereof have been duly authorized and reserved for issuance upon such conversion and, when issued and delivered upon conversion of the Securities in accordance with the provisions of the Securities and the Indenture, will be duly and validly issued, fully paid and non-assessable; and such issuance will not be subject to any preemptive or other similar rights to acquire Common Stock under the certificate of incorporation or by-laws of the Company or the DGCL.

G. The Indenture has been duly executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms.

H. The execution and delivery of, and the performance by the Company of its obligations under, the Purchase Agreement, the Indenture and the Securities (including the obligation of the Company to issue Common Stock upon the conversion of the Securities) do not and will not violate or conflict with, result in a breach of, or constitute a default under (a) the certificate of incorporation or by-laws of the Company; (b) any agreement or instrument listed on Schedule I hereto, (c) any U.S. federal or New York or California state statute or the DGCL or (d) to our knowledge, any rule, order, decision, judgment or decree of any court or governmental body or agency of the United States, Delaware (under the DGCL), New York or California that may be applicable to the Company or any Subsidiary or any of their respective properties.

I. Except for compliance with state securities or Blue Sky laws and the filing of a Notification: Listing of Additional Shares with The Nasdaq Stock Market LLC, no consents, approvals, orders or authorizations to be obtained by the Company from, or any registrations, declarations or filings to be made by the Company with, any governmental authority under any United States federal or New York or California statute, rule or regulation applicable to the Company or the DGCL are required to have been obtained that have not been obtained or made by the Company for (a) the valid execution and delivery by the Company of the Purchase Agreement, the Indenture and the Securities, (b) the sale by the Company of the Securities under the Purchase Agreement, (c) the issuance by the Company of the Securities under the Indenture and the performance by the Company of its obligations thereunder, in accordance with their terms or (d) the issuance by the Company of Common Stock upon the conversion of the Securities in accordance with the Indenture.

J. The documents incorporated by reference in the Time of Sale Disclosure Package and the Offering Memorandum (other than the financial statements and notes thereto and related financial statement schedules and the financial data derived from such financial statements or schedules included therein or omitted therefrom, as to which we express no opinion), when they were filed (or, if an amendment with respect to any such document was filed, when such amendment was filed) with the Commission, complied as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder.

K. The Company has the authorized capital stock as set forth in the Time of Sale Disclosure Package and the Offering Memorandum under the caption "Description of Capital Stock"; the statements set forth in the Time of Sale Disclosure Package and the Offering Memorandum under the captions "Description of Notes," "Description of Capital Stock," "Plan of Distribution" and "Transfer Restrictions," insofar as they purport to constitute a summary of the terms of the Notes, the capital stock of the Company or legal matters or provisions of the Purchase Agreement, Indenture or the certification of incorporation or by-laws of the Company, fairly summarize, in all material respects, such terms.

L. The statements set forth in the Time of Sale Disclosure Package and the Offering Memorandum under the caption "Certain U.S. Federal Income Tax Considerations," insofar as they purport to describe provisions of the United States federal tax laws referred to therein, fairly summarize, in all material respects, the matters referred to therein.

M. The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Time of Sale Disclosure Package and the Offering Memorandum will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

N. To our knowledge, except as disclosed in the Time of Sale Disclosure Package and the Offering Memorandum, (a) no legal or governmental actions, suits or proceedings are pending to which the Company or any Subsidiary is or may be a party, or to which the property of the Company or any Subsidiary is or may be subject, except in each case for proceedings that, if the subject of an unfavorable decision, rule or finding would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (b) no such proceedings have been threatened in writing against the Company or any Subsidiary or with respect to their respective properties.

O. Assuming the accuracy of the Initial Purchaser's representation and warranties, and the Initial Purchaser's compliance with the covenants, contained in the Purchase Agreement, no registration of the Securities or the Underlying Securities under the Securities Act or qualification of the Indenture under the Trust Indenture Act of 1939, as amended, is required in connection with the offer, sale and delivery of the Securities by the Company to the Initial Purchaser or the initial resale of the Securities by the Initial Purchaser in the manner contemplated by the Purchase Agreement, the Time of Sale Disclosure Package and the Offering Memorandum (it being understood that we express no opinion as to any subsequent resale of the Securities).

We also confirm that we have participated in conferences with representatives of the Company and with representatives of the Company's independent accountants, the Initial Purchaser and its counsel at which conferences the contents of the Time of Sale Disclosure Package and the Offering Memorandum and related matters were discussed, and, although we assume no responsibility for the accuracy, completeness or fairness of the Time of Sale Disclosure Package or the Offering Memorandum (except as expressly provided above), no facts have come to our attention to cause us to believe that the Time of Sale Disclosure Package, at the Time of Sale, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than the financial statements and notes thereto and related financial statement schedules and the financial data derived from such financial statements or schedules included therein or omitted therefrom, as to which we express no belief) or that the Offering Memorandum, as of its date and as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than the financial statements and notes thereto and related financial statement schedules and the financial data derived from such financial statements or schedules included therein or omitted therefrom, as to which we express no belief).

**OPINION OF SHEARN DELAMORE & CO.,
MALAYSIAN COUNSEL FOR THE COMPANY**

The opinion of Shearn Delamore & Co., Malaysian counsel for the Company, to be delivered pursuant to Section 6(c)(2) of the Agreement shall be to the effect that:

FINISAR MALAYSIA SDN BHD (Company No.538677-A) (the “Company”)

This opinion is being delivered to you at the request of Finisar Corporation pursuant to Section 6(c)(2) of the Purchase Agreement (as defined below). We understand that Finisar Corporation (the “**Issuer**”), a corporation established in Delaware, USA, proposes to issue and sell to Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “**Initial Purchaser**”), convertible senior notes due 2033 (the “**Securities**”), pursuant to a purchase agreement dated 10 December, 2013 (the “**Purchase Agreement**”) entered into between the Issuer and the Initial Purchaser (collectively, the “**Transaction**”).

1. For the purposes of the Transaction above, we have acted as Malaysian legal counsel for Finisar Malaysia Sdn Bhd (Company No. 538677-A), a wholly owned subsidiary of the Issuer, in connection with the matters set out under paragraph 5 below, under the laws of Malaysia.
2. This opinion is limited to the laws of Malaysia of general application published and in effect on the date of this opinion, as currently applied by the courts of Malaysia, and is given on the basis that it will be governed by and construed (including all terms used in it) in accordance with the laws of Malaysia. We have made no investigation of, and do not express or imply any views on, the laws of any country other than Malaysia.
3. For the purpose of rendering this opinion, we have examined:-
 - (a) A certified true copy of the Memorandum and Articles of Association of the Company (the “**M&A**”) (a copy of which is enclosed herewith as **Appendix I**);
 - (b) A certified true copy of the Certificate of Incorporation of Private Company (Form 9) of the Company dated 8 February 2001 (a copy of which is enclosed herewith as **Appendix II**);
 - (c) A certified true copy of each Return of Allotment of Shares (Form 24) dated 13 February 2001, 22 June 2001, 11 February 2003 and 9 September 2004 respectively (collectively, the “**Forms 24**”) (copies of which are enclosed herewith as **Appendix III**);
 - (d) A certified true extract of the Members’ Register of the Company setting out each acquisition by the Issuer of shares in the Company (the “**Members’ Register**”) (which is enclosed herewith as **Appendix IV**);
 - (e) A certified true copy of a Notice of Situation of Registered Office and Office Hours and Particulars of Changes (Form 44) dated 16 March 2007 (a copy of which is enclosed herewith as **Appendix V**);
 - (f) A certified true copy of a Return Giving Particulars in Register of Directors, Managers & Secretaries and Changes of Particulars (Form 49) dated 22 September 2011 (a copy of which is enclosed herewith as **Appendix VI**);
 - (g) A certified true copy of the Annual Return of the Company dated 3 October 2013 (the “**Annual Return**”) (a copy of which is enclosed herewith as **Appendix VII**);
 - (h) An [original letter] dated 5 December 2013 from the Company addressed to the Initial Purchaser, confirming that its issued share capital is fully paid-up (“**Confirmation on Share Capital**”) (a copy of which is enclosed herewith as **Appendix VIII**);
 - (i) An [original certificate] dated [] December 2013 signed by 2 directors of the Company confirming *inter alia* that no legal proceedings have been commenced against it, no action threatened for its

liquidation nor have any of its business licences been suspended or cancelled (the “**Certificate**”) (a copy of which is enclosed herewith as **Appendix IX**);

- (j) A certified true copy of the minutes of each shareholders’ meeting held on 21 June 2001, 10 February 2003 and 8 September 2004, respectively (collectively, the “**Shareholders’ Resolutions**”) (copies of each of which are enclosed herewith as **Appendix X**);
- (k) A certified true copy of each circular Board resolution dated 8 February 2001, 22 June 2001, 10 February 2003 and 8 September 2004, respectively (collectively, the “**Board Resolutions**”) (copies of each of which are enclosed herewith as **Appendix XI**);
- (l) the results of a company search on the Company at the Companies Commission of Malaysia dated [12] December 2013 based on documents registered with the Companies Commission of Malaysia as at [] (a copy of which is enclosed herewith as **Appendix XII**); and
- (m) the eServices Liquidation Search Result dated [12] December 2013 from the office of the Director General of Insolvency on the Company stating that no winding-up order has been made against the Company in Malaysia as at that date (a copy of which is enclosed as **Appendix XIII**).

The Shareholders’ Resolutions and the Board Resolutions shall hereinafter collectively, be referred to as the “**Resolutions**”. We have no knowledge of the day-to-day operations of the Company and, except to the extent expressly set forth herein, have not undertaken any independent investigation or inquiry into the Company’s affairs or business. Except as stated in this paragraph 3, we have not examined any other documents and have not made any other enquiries concerning the Company. The documents as set out in this paragraph 3 are documents of a type which we would ordinarily request and rely on, in giving our opinion under paragraph 5 below.

Assumptions

4. For the purpose of this opinion, we have assumed:

- (a) that each of the Confirmation on Share Capital and the Certificate has been duly authorized, executed and delivered by or on behalf of the Company.
 - (b) the correctness of all facts stated in the Confirmation on Share Capital and the Certificate.
 - (c) that none of the Company’s signatories to each of the Confirmation on Share Capital and the Certificate has signed the said documents by reason or in consequence (whether wholly or in part) of fraud, mistake, duress, undue influence, misrepresentation or any other similar act, matter or thing which would or might vitiate or prejudicially affect the Purchase Agreement or otherwise entitle any party to avoid, rescind or have rectified the Purchase Agreement or any of its obligations under the Purchase Agreement and/or in connection with the Transaction.
 - (d) the genuineness of all seals and signatures on all documents and the completeness, and the conformity to original documents, of all copies and specimens submitted to us and that any document submitted to us and any authorisation referred to in this opinion continues in full force and effect.
 - (e) that the copy of the Company’s M&A, submitted to us is up to date and incorporates all amendments made thereto.
 - (f) that neither the Initial Purchaser nor any of its officers or employees has notice (or would, on making reasonable enquiry, become aware) of any matter which would adversely affect the validity or regularity of the documents set out under paragraph 3. above.
 - (g) that all other documents or agreements referred to in the documents set out under paragraph 3. above, and which may affect the legality, validity and enforceability of the latter, are themselves legal, valid and enforceable.
 - (h) that the Securities fall within the definition of “securities” under the Capital Markets and Services Act, 2007 of Malaysia (“**CMSA**”), and either:
-

- (i) the Issuer will not make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, the Securities in Malaysia; or
- (ii) if the Issuer or any one or the Initial Purchaser do make available, offer for subscription or purchase, or issue an invitation to subscribe for, or purchase the Securities in Malaysia, such offer or invitation will fall within any one or more of the categories of transactions under Schedule 5 to the CMSA, and will constitute an excluded offer or excluded invitation under Schedule 6 or Section 229(1)(b) of the CMSA and an excluded issue under Schedule 7 or Section 230(1)(b) of the CMSA.

Opinion

5. Based on the documents referred to in paragraph 3 and the assumptions in paragraph 4 above and subject to the qualification in paragraph 6 below and to any matters not disclosed to us, we are of the opinion that:
- (a) based on the company search conducted on the Company at the Companies Commission of Malaysia on [12] December 2013, the Company is duly incorporated under the Companies Act, 1965 of Malaysia (the “**Companies Act 1965**”) and is validly existing as a private company with limited liability under the laws of Malaysia.
 - (b) based on the M&A, the Company has the power and capacity to conduct the business it ordinarily conducts;
 - (c) based on the M&A, the Forms 24, the Members’ Register, the Confirmation on Share Capital, the results of the company search conducted on [12] December 2013 (referred to in paragraph 5(a) above), the Annual Return and the Resolutions, respectively:
 - (i) the Company has a total issued share capital of RM133,000,000-00;
 - (ii) the issued share capital is comprised of 133,000,000 ordinary shares of RM1.00 each in the Company (the “**Issued Shares**”);
 - (iii) the Issued Shares are fully paid-up;
 - (iv) the issuance of the Issued Shares by the Company on:
 - a. 8 February 2001 was duly authorized by a Board resolution passed on 8 February 2001, the relevant Form 24 dated 13 February 2001 was duly lodged with the Companies Commission of Malaysia on 21 February 2001 in accordance with Section 54 of the Companies Act 1965 and the corresponding entry made on the Members’ Register
 - b. 22 June 2001 was duly authorized by a shareholders’ resolution passed on 21 June 2001 and a circular Board resolution dated 22 June 2001, the relevant Form 24 dated 22 June 2001 was duly lodged with the Companies Commission of Malaysia on 2 July 2001 in accordance with Section 54 of the Companies Act 1965 and the corresponding entry made on the Members’ Register;
 - c. 10 February 2003 was duly authorized by a shareholders’ resolution passed on 10 February 2003 and a circular Board resolution dated 10 February 2003, the relevant Form 24 dated 11 February 2003 was duly lodged with the Companies Commission of Malaysia on 13 February 2003 in accordance with Section 54 of the Companies Act 1965 and the corresponding entry made on the Members’ Register; and
 - c. 8 September 2004 was duly authorized by a shareholders’ resolution passed on 8 September 2004 and a circular Board resolution dated 8 September 2004, the relevant Form 24 dated 9 September 2004 was duly lodged with the Companies Commission of Malaysia on 10 September 2004 in accordance with Section 54 of the Companies Act 1965 and the corresponding entry made on the Members’ Register,

and based on the documents enumerated at paragraphs 5(c)(iv)a. to 5(c)(iv)c. above, the issuance of the Issued Shares was duly authorized and the Issued Shares were validly issued.

- (v) the Issuer holds all the Issued Shares and is the sole shareholder of the Company.
- (d) based on the eServices Liquidation Search Result dated [12] December 2013 from the office of the Director General of Insolvency on the Company, no winding-up order has been made against the Company as at the date of the search. Based on such winding-up search and the Certificate, the Company has not taken any action nor have any steps been taken or legal or administrative proceedings been commenced or threatened for the winding-up, dissolution or liquidation of the Company or for the suspension, withdrawal, revocation or cancellation of any of its business licences.
- (e) the Issuer is not required to obtain the consent of the Securities Commission of Malaysia prior to issuing and selling the Securities to the Initial Purchaser nor required to register a prospectus in relation to the Securities with the Securities Commission of Malaysia prior to such issue.

Qualification

6. In addition, this opinion is subject to the following qualification:-

- (a) that there may be a significant delay between the lodging of documents and the subsequent entry of information from those documents, on the registers maintained with the Companies Commission of Malaysia. The official searches will also not reveal whether or not a winding-up petition has been presented. Notice of a winding-up order made or resolution passed or receiver or manager appointed may not be filed with the Companies Commission of Malaysia immediately and there may be a significant delay between the filing of such notice and its subsequent entry on the register at the Companies Commission of Malaysia.

Reliance

- 7. This opinion is given for the sole benefit of the Initial Purchaser in connection with the Purchase Agreement.
- 8. This opinion may not be disclosed to anyone else, except that it may be disclosed as required by law or regulation or to any professional adviser, but only on the express basis that they may not rely on it.
- 9. This opinion is not to be quoted or referred to in any public document or filed with anyone without our written consent.

**CERTIFICATION OF CO-PRINCIPAL EXECUTIVE OFFICER PURSUANT
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jerry S. Rawls, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Finisar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 6, 2014

/s/ Jerry S. Rawls

Jerry S. Rawls

**Chairman of the Board of Directors
Co-Principal Executive Officer**

**CERTIFICATION OF CO-PRINCIPAL EXECUTIVE OFFICER PURSUANT
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Eitan Gertel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Finisar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 6, 2014

/s/ Eitan Gertel

Eitan Gertel
Chief Executive Officer
Co-Principal Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kurt Adzema, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Finisar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 6, 2014

/s/ Kurt Adzema

Kurt Adzema
Executive Vice President, Finance and
Chief Financial Officer

CERTIFICATION OF CHAIRMAN OF THE BOARD PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Jerry S. Rawls, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Finisar Corporation (the "Company") on Form 10-Q for the three months ended January 26, 2014 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 6, 2014

/s/ Jerry S. Rawls

Jerry S. Rawls
Chairman of the Board of Directors
Co-Principal Executive Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Eitan Gertel, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Finisar Corporation (the “Company”) on Form 10-Q for the three months ended January 26, 2014 (the “Report”) fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 6, 2014

/s/ Eitan Gertel

Eitan Gertel
Chief Executive Officer
Co-Principal Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Kurt Adzema, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Finisar Corporation (the "Company") on Form 10-Q for the three months ended January 26, 2014 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 6, 2014

/s/ Kurt Adzema

Kurt Adzema
Executive Vice President, Finance and
Chief Financial Officer

