

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re FINISAR CORPORATION  
SECURITIES LITIGATION

Case No. 5:11-CV-01252-EJD  
CLASS ACTION

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II)  
SETTLEMENT HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES**

**A Federal Court authorized this Notice. This is not a solicitation from a lawyer.**

**Notice of Pendency of Class Action:** Please be advised that your rights may be affected by the above-captioned securities fraud class action (the "Action") pending in the United States District Court for the Northern District of California (the "Court"), if you purchased or otherwise acquired the publicly traded common stock of Finisar Corporation (NASDAQ:FNSR) during the period from December 2, 2010 through March 8, 2011, inclusive (the "Class Period"), and were allegedly damaged thereby (the "Settlement Class").<sup>1</sup>

**Notice of Settlement:** Please also be advised that the Court-appointed Lead Plaintiff, Oklahoma Firefighters Pension and Retirement System ("Lead Plaintiff"), on behalf of itself and the Settlement Class, have reached a proposed settlement of the Action for \$6,800,000 in cash that, if approved, will resolve all claims in the Action (the "Settlement").

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of payment from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

- Lead Plaintiff claims that Defendants made materially false and misleading statements and omissions concerning Finisar's business operations and financial prospects. Lead Plaintiff and Lead Counsel have been investigating and litigating this Action since its filing in March 2011. The Settlement provides the Settlement Class with a cash benefit now, in lieu of engaging in years of further litigation – including a pending appeal, further contested motions, and a contested trial – with the risk of no recovery at all. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.
- Your recovery will depend on the number of shares of Finisar stock purchased during the Class Period, and the timing of your purchases and any sales. It will also depend on the number of valid Claim Forms that Settlement Class Members submit and the amount of such claims. Based on the information currently available, it is estimated that if Settlement Class Members submit claims *for 100% of the shares eligible* for distribution under the Plan of Allocation (described below), the estimated average distribution will be approximately \$.20 per share before deduction of Court-approved fees and expenses, including the cost of notifying Settlement Class Members and settlement administration, taxes, and any attorneys' fees and expenses awarded by the Court to Lead Counsel. Historically, actual claims rates are less than 100%, which

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<sup>1</sup> All capitalized terms not defined in this Notice have the meanings provided in the Stipulation and Agreement of Settlement, filed with the Court on July 14, 2020 (the "Stipulation"), which can be viewed at [www.FinisarSecuritiesLitigation.com](http://www.FinisarSecuritiesLitigation.com).

may result in higher distributions per share. A Settlement Class Member’s actual recovery will be a *pro rata* share of the Net Settlement Fund determined by that claimant’s recognized claim as compared to the total recognized claims of all Settlement Class Members who submit valid Claim Forms. The Parties do not agree on the average amount of damages per share of Finisar common stock that would be recoverable if the Class Representative were to prevail in the action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any members of the Class suffered damages as a result of their conduct.

- The Court-appointed Lead Counsel have not yet received any payment for their work incurred in investigating the facts, conducting this litigation and negotiating the Settlement on behalf of the Plaintiff and the Settlement Class. Lead Counsel intends to apply for an award of attorneys’ fees not to exceed 25% of the total settlement funds, and reimbursement of additional expenses in the amount up to \$425,000. The request for expenses may include a request for reimbursement of the costs and expenses of Lead Plaintiff in accordance with 15 U.S.C. § 78u-4(a)(4) and award for representing the Settlement Class. If the above amount is requested and approved by the Court, the estimated average cost per eligible share of common stock will be approximately \$.14 per share, *if* claims are submitted for 100% of the eligible shares of Finisar stock. In addition, the distribution will be reduced by Notice and Administration costs. Please note that these amounts are only estimates.
- The Court presiding over this case must decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and the time for any appeals has lapsed, or, if there are any appeals, after the appeals are resolved. Please be patient.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>   |  |
|---|--|
| Submit a Claim Form POSTMARKED NO LATER THAN FEBRUARY 26, 2021  | This is the only way to be eligible to receive a payment from the Settlement.  |
| Exclude Yourself from the Class by submitting a written request for exclusion so that it is received NO LATER THAN JANUARY 7, 2021  | If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement. This is the only option that allows you to participate in another lawsuit against the Defendants relating to the class claims being released in this case. |
| Object by submitting a written objection so that it is received NO LATER THAN JANUARY 21, 2021                                      | If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys’ fees and Litigation Expenses, you may write to the Court and explain why you do not like it/them.   |
| Go to a Hearing ON FEBRUARY 11, 2021 and file a notice of intention to appear so that it is received no later than JANUARY 21, 2021 | You may ask to speak in Court about the Settlement.  |
| Do Nothing  | Get no payment. Give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.  |

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## BASIC INFORMATION

### 1. Why did I get this notice package?

The Court authorized this to be sent to you because you, or someone in your family or on your behalf, may have purchased or acquired Finisar stock from December 2, 2010 through March 8, 2011, inclusive.

This Notice was sent because you have a right to know about a proposed Settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this Action is the United States District Court for the Northern District of California, and the case is known as *In re Finisar Corporation Securities Litigation*, Case No. 5:11-CV-01252-EJD. The Action is assigned to the Honorable Edward J. Davila, United States District Judge. The entity that leads the Action is Oklahoma Firefighters Pension and Retirement System, the Court-appointed “Lead Plaintiff,” and the companies and individuals it sued are called Defendants.

## **2. What is this lawsuit about?**

This is a securities fraud class action alleging violations of Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, against Defendants for making allegedly false and misleading statements or omissions of material facts regarding Finisar's business operations and financial prospects. Lead Plaintiff asserts that as a result of Defendants’ allegedly false and misleading statements Finisar’s stock was artificially and improperly inflated, and that Settlement Class Members overpaid for Finisar stock purchased during the Class Period. Defendants have denied and continue to deny all of the allegations and that they did anything wrong.

## **3. Why is this a class action?**

Class actions are generally used in lawsuits that affect a large number of individuals; in effect, the class action operates to consolidate into a single action all of the claims of individuals allegedly harmed by the same conduct or course of conduct, thus alleviating the need for Members of the Class to file their own individual lawsuits to recover for the harm alleged. Judge Edward J. Davila is the judge for this class action.

## **4. What are Plaintiff's reasons for settlement?**

Lead Plaintiff and Lead Counsel have been diligently investigating and litigating this action against Defendants since it was filed in March 2011 and believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through a pending appeal and then trial, as well as the substantial risks they would face in establishing liability and damages. In prosecuting this Action, Lead Plaintiff and Lead Counsel have gained a thorough understanding of the risks and merits of continued litigation, through, for example, investigating and filing three amended complaints, opposing three motions to dismiss filed by Defendants, successfully briefing and arguing to the United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”) for reversing the Court’s dismissal of the first amended complaint, and following the Ninth Circuit’s ruling and returning the case to the Court, serving discovery and reviewing documents produced by Defendants and conducting depositions, and litigating class certification issues.

In particular, Lead Plaintiff and Defendants disagree as to whether Plaintiff and the Class can rely on the fraud-on-the-market presumption of reliance on Defendants’ allegedly false and misleading statements. On May 24, 2019, the Court, siding with Defendants, ruled that the fraud-on-the-market presumption had been rebutted and dismissed the Action and then entered judgment on the pleadings against Lead Plaintiff. Lead Plaintiff again filed an appeal to the Ninth Circuit. Under the order and purview of the Ninth Circuit Mediation Program, Lead Plaintiff and Defendants held private mediation discussions with Mediator Michelle Yoshida of Phillips ADR, which facilitated additional exchanges of information and arms’-length negotiations as to the strengths,

weaknesses, and risks of obtaining a successful appeal and further litigation of this Action faced by both Lead Plaintiff and Defendants, and the Parties reached an agreement to settle the Action.

In light of these risks, the uncertainty and the amount of the recovery for the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, as compared to the risk that the claims in the Action against the Defendants might produce a smaller recovery or no recovery at all.

Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever and deny that any class member is entitled to damages. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission by the Defendants of any wrongdoing, liability, loss causation or measure of damages.

## **WHO IS IN THE SETTLEMENT**

### **5. How do I know if I am part of the Settlement?**

To see if you will receive money from this Settlement, you first have to determine if you are a Settlement Class Member. Except for certain exclusions listed below, the Settlement Class includes all persons and entities who purchased or otherwise acquired the common stock of Finisar from December 2, 2010 through March 8, 2011, inclusive (the “Class Period”), and who were allegedly damaged thereby.

### **6. Are there exceptions to being included?**

Excluded from the Settlement Class are: (i) Defendants; (ii) any person who was an officer or director of Finisar during the Class Period; (iii) the Immediate Family Members of all individual persons excluded in (i) or (ii); (iv) the parents, subsidiaries, and affiliates of Finisar; (v) any entity in which any person or entity excluded in (i), (ii), (iii) or (iv) has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, heirs, affiliates, successors, or assigns of any such excluded person or entity. Also excluded from the Settlement Class are any persons or entities who exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice.

### **7. I’m still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. For more information, you can contact the Claims Administrator, c/o Finisar Securities Settlement, 1650 Arch Street Suite 2210, Philadelphia, PA 19109, by email to [Info@FinisarSecuritiesLitigation.com](mailto:Info@FinisarSecuritiesLitigation.com), or telephone at (833) 935-2722, or visit the web site at [www.FinisarSecuritiesLitigation.com](http://www.FinisarSecuritiesLitigation.com). Filling out the claim form as described in question 10 also will tell you whether you qualify.

## **THE SETTLEMENT BENEFITS — WHAT YOU GET**

### **8. What does the Settlement provide?**

The Settlement will result in a fund of \$6,800,000 in cash (the “Settlement Fund”). The Settlement Fund, less costs, fees, taxes, and expenses (the “Net Settlement Fund”), will be divided among all eligible Settlement Class Members who send in valid Proofs of Claim (“Authorized Claimants”). Costs, fees, and expenses include Court-approved attorneys’ fees and expenses, the costs of notifying Settlement Class Members, including the costs of printing and mailing this Notice and Claim Form; the cost of publishing notice; the costs of claims administration; and taxes on the Settlement Fund. Settlement Class Members who do not timely submit valid

Proofs of Claim will not share in the Settlement proceeds, but will otherwise be bound by the terms of the Settlement.

## **9. How much will my payment be? Understanding your payment.**

Your share of the Net Settlement Fund, if any, will depend on the number of valid claim forms that Class Members send in and the number of shares of Finisar common stock you purchased during the relevant period and when you bought and sold them. The Net Settlement Fund will be distributed to Authorized Claimants – *i.e.*, members of the Settlement Class who timely submit valid Proofs of Claim that show a Recognized Loss and are approved by the Court.

### **PLAN OF ALLOCATION**

The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic losses as a result of the alleged violations of the federal securities laws during the Class Period (December 2, 2010 through March 8, 2011). To design this Plan, Lead Counsel has conferred with their economics consultants. This Plan is intended to be generally consistent with an assessment of, among other things, the damages that Lead Counsel and Lead Plaintiff believe were recoverable in the Action. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. An individual Settlement Class Member's recovery will depend on, for example (i) the total number and value of claims submitted; (ii) when the Settlement Class Member purchased or acquired Finisar publicly traded common stock; and (iii) whether and when the Settlement Class Member sold his, her, or its shares of Finisar stock.

This Plan of Allocation generally measures the amount of loss that a Settlement Class Member can claim for purposes of making *pro rata* allocations of the Net Settlement Fund to Authorized Claimants. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of Finisar common stock. In this case, Class Representatives allege that Defendants issued false statements and omitted material facts from December 2, 2010 through the close of the market on March 8, 2011, inclusive (the "Class Period"), which artificially inflated the price of Finisar common stock. It is alleged that the corrective information released to the market on March 8, 2011 (after market close) impacted the market price of Finisar common stock in a statistically significant manner and removed the alleged artificial inflation from the prices of the common stock on March 9, 2011. Accordingly, in order to have a compensable loss, Finisar common stock must have been purchased or otherwise acquired during the Class Period and held through the alleged corrective disclosures.

Because the Net Settlement Fund is less than the total losses alleged to be suffered by Settlement Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed among Authorized Claimants on a *pro rata* basis. An Authorized Claimant's "Recognized Claim" shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

## **Calculation of Recognized Loss**

For each share of Finisar publicly traded common stock purchased or acquired from December 2, 2010 through March 8, 2011, inclusive, and:

- a. sold before March 9, 2011, the Recognized Loss per share is zero;
- b. sold from March 9, 2011 through and including the close of trading on June 7, 2011, the Recognized Loss per share is the least of:
  - i. \$10.84 per share; or
  - ii. the purchase price per share minus the sales price per share; or
  - iii. the difference between the purchase price per share and the average closing price between March 9, 2011 and the date of the sale.<sup>2</sup>
- c. held as of the close of trading on June 7, 2011, the Recognized Loss per share is the lesser of:
  - i. \$10.84 per share; or
  - ii. the difference between the purchase price per share and \$24.12 per share.<sup>3</sup>

If a Class Member held Finisar common stock at the beginning of the Class Period or made multiple purchases, acquisitions or sales of eligible Spectrum securities during or after the Class Period, the starting point for calculating a claimant's Recognized Loss is to match the claimant's holdings, purchases and acquisitions to their sales using the FIFO (*i.e.*, first-in-first-out) method. Under the FIFO method, Finisar common stock sold during the Class Period will be matched, in chronological order, first against eligible securities held at the beginning of the Class Period. The remaining sales of eligible securities during the Class Period will then be matched, in chronological order, against eligible securities purchased or acquired during the Class Period.

Purchases or acquisitions and sales of Finisar shares shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of shares during the Class Period shall not be deemed a purchase, acquisition, or sale of shares for the calculation of a Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares unless (i) the donor or decedent purchased or otherwise acquired such shares during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$20.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$20.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant. Payment according to this Plan of Allocation will be deemed conclusive against all Authorized Claimants. Recognized Claims will be calculated as defined herein by the Claims Administrator and cannot be less than zero.

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<sup>2</sup> Pursuant to Section 21(D)(e)(2) of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period [March 9, 2011 through June 7, 2011], the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security."

<sup>3</sup> Pursuant to Section 21(D)(e)(1) of the PSLRA, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." The mean (average) closing trading price of Finisar common stock during the 90-day period from March 9, 2011 through June 7, 2011 was \$24.12.

Distributions to Authorized Claimants will be made after all claims have been processed and after the Court has approved the Claims Administrator's determinations. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least 90 days from the date of initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible and economical, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, shall be contributed to nonsectarian, not-for-profit charitable organization(s) serving the public interest, designated by Lead Plaintiff and approved by the Court.

Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel, their damages consultants, Claims Administrator, or other agent designated by Lead Counsel, arising from determinations or distributions to claimants made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Lead Plaintiff, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Northern District of California with respect to his, her, or its claim.

The Court may approve this Plan of Allocation ("Plan of Allocation" or "Plan"), or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website at: [www.FinisarSecuritiesLitigation.com](http://www.FinisarSecuritiesLitigation.com).

## **HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM**

### **10. How can I get a payment?**

In order to qualify for payment, subject to the Plan of Allocation, you must be an eligible Settlement Class Member and send in a valid Claim Form, and properly document your claim as requested in the Claim Form. A Claim Form is enclosed with this Notice. Read the instructions carefully, fill out the Claim Form, include the documents the form asks for, sign it, and mail (post-marked) no later than **February 26, 2021**.

### **11. When would I get my payment?**

The Court will hold a Settlement Hearing on **February 11, 2021**, at 9:00 a.m., to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain when appeals will be resolved, and resolving them can take time, perhaps several years. Everyone who sends in a Claim Form will be informed of the determination with respect to their claim. Please be patient.

### **12. What am I giving up to get a payment or stay in the Class?**

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and on behalf of any other person or entity legally entitled to bring Released

Plaintiffs' Claims (as defined below) on behalf of the respective Settlement Class Member in such capacity only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the Defendants' Releasees (as defined below), and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the Released Plaintiffs' Claims against any of the Defendants or the Defendants' Releasees. This Release shall not apply to any Excluded Plaintiffs' Claims.

"Released Plaintiffs' Claims" means any and all claims, debts, demands, rights, and causes of action of every nature and description (including, but not limited to, any claims for damages, interest, attorney's fees, expert, or consulting fees, and any other costs, expenses, or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-matured, whether class or individual in nature, that Plaintiffs or any other member of the Settlement Class: (i) asserted in the Complaint (and the prior complaints filed in this action), or (ii) could have asserted in any forum that concern, arise out of, relate to, involve, or are based upon any of the allegations, circumstances, events, transactions, facts, matters, representations, or omissions involved, set forth, or referred to in the Complaint (and prior complaints) and that relate to the purchase, acquisition, beneficial interest or ownership of Finisar stock during the Class Period. Released Plaintiffs' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims of any person or entity who submits a request for exclusion that is accepted by the Court ("Excluded Plaintiffs' Claims").

"Defendants' Releasees" means Defendants, together with their past, present, or future affiliates, divisions, joint ventures, assigns, assignees, direct or indirect parents or subsidiaries, controlling shareholders, successors, predecessors, and entities in which a Defendant has a controlling interest, and each of their past, present, or future officers, directors, agents, employees, partners, attorneys, controlling shareholders, advisors, investment advisors, auditors, accountants, insurers (including reinsurers and co-insurers), and Immediate Family Members, and the legal representatives, heirs, successors in interest, or assigns of any of the foregoing.

"Unknown Claims" means any Released Plaintiffs' Claims which Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and on behalf of any other person or entity legally entitled to bring Released Defendants' Claims (as defined below) on behalf of the respective Defendant in such capacity only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released

Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees (as defined below), and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the Released Defendants' Claims against Plaintiffs or any of the other Plaintiffs' Releasees.

"Released Defendants' Claims" means any and all claims, debts, demands, rights, and causes of action of every nature and description (including, but not limited to, any claims for damages, interest, attorney's fees, expert, or consulting fees, and any other costs, expenses, or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-matured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person or entity who submits a request for exclusion from the Settlement Class that is accepted by the Court ("Excluded Defendants' Claims").

"Plaintiffs' Releasees" means Lead Plaintiff, all other Settlement Class Members, and their respective attorneys, together with their past, present, or future affiliates, divisions, joint ventures, assigns, assignees, direct or indirect parents or subsidiaries, controlling shareholders, successors, predecessors, and entities in which a Settlement Class Member has a controlling interest, and each of their past, present, or future officers, directors, agents, employees, partners, attorneys, controlling shareholders, members, trusts, trustees, advisors, investment advisors, auditors, accountants, insurers (including reinsurers and co-insurers), and Immediate Family Members, and the legal representatives, heirs, successors in interest, or assigns of any of the foregoing.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **13. How do I get out of the settlement?**

If you do not want a payment from this Settlement, but you want to keep the right to attempt to sue or continue to sue Defendants on your own for the Released Claims in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself or is sometimes referred to as opting out of the Settlement Class. **Please note: if you decide to exclude yourself because you want to bring your own lawsuit to pursue claims alleged in the Action, you should consult with your own attorney to discuss whether your individual claim would be time-barred by the applicable statutes of limitations or repose.**

To exclude yourself from the Settlement Class, you must send a letter by mail stating that you "request exclusion from the Settlement Class in *In re Finisar Corporation Securities Litigation*, Case No. 5:11-CV-01252-EJD." You must include your name, address, telephone number, your signature, the number of shares of Finisar stock you owned as of the opening of trading on December 2, 2010, the number of shares of Finisar stock you purchased during the Class Period (*i.e.*, December 2, 2010 through March 8, 2011, inclusive), the dates of such purchases, the prices paid per share for each purchase, and any sales. You must mail your exclusion request postmarked no later than **January 7, 2021**, to the Claims Administrator at:

Finisar Securities Litigation – EXCLUSIONS  
c/o Claims Admin  
1650 Arch Street Suite 2210  
Philadelphia, PA 19103

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you are not eligible to receive any settlement payment, and you cannot object to the Settlement. If you ask to be excluded in the way set forth above, you will not be legally bound by anything that happens in this lawsuit.

#### **14. If I don't exclude myself, can I sue Defendants for the same thing later?**

No. Unless you timely and validly exclude yourself, you give up any right to sue any Defendants or the Released Parties for the Released Claims in this Settlement. Remember, the exclusion deadline is **January 7, 2021**.

#### **15. If I exclude myself, can I get money from this Settlement?**

No. If you exclude yourself, you will not receive any money from the Settlement, and you should not send in a Claim Form.

### **THE LAWYERS REPRESENTING YOU**

#### **16. Do I have a lawyer in this case?**

The Court appointed the law firm of Abraham, Fruchter & Twersky, LLP to represent you and other Settlement Class Members. These lawyers are called Lead Counsel or Class Counsel. You will not be personally liable for the fees and expenses incurred by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **17. How will the lawyers be paid?**

Lead Counsel will ask the Court for an award of attorneys' fees not to exceed 25% of the Settlement funds, and reimbursement of up to \$425,000 for incurred litigation expenses. The request for litigation expenses may include a request for reimbursement of the costs and expenses of Lead Plaintiff in accordance with 15 U.S.C. § 78u-4(a)(4), and award for representing the Settlement Class. Such fees and expenses as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees and expenses.

The attorneys' fees awarded will be the only payment to Lead Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. Lead Counsel has not been paid for their services in conducting this litigation on behalf of Lead Plaintiff and the Settlement Class. The fees requested will compensate Lead Counsel for their work in achieving the Settlement Fund. The Court determines what counsel should receive from the Settlement Fund for fees and expenses, and may award less than this amount.

### **OBJECTING TO THE SETTLEMENT**

#### **18. How do I tell the Court that I don't like the Settlement?**

If you are a Settlement Class Member (and you have not excluded yourself), you can object to the Settlement if you do not like any part of it, including the Plan of Allocation and the request for attorneys' fees and expenses. You can state the reasons why you think the Court should not approve it, and the Court will consider your views. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To object, you must file an objection, including any papers and briefs, with the Clerk of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Room 2112, San Jose, CA 95113 on or before **January 21, 2021**. The

objection must state the reasons you object to the Settlement in *In re Finisar Corporation Securities Litigation*, Case No. 5:11-CV-01252-EJD, and you must include your name, address, telephone number, your signature, the number of shares of Finisar stock you owned as of the opening of trading on December 2, 2010, the number of shares of Finisar stock you purchased during the Class Period (i.e., December 2, 2010 through March 8, 2011, inclusive), the dates of such purchases, the prices paid per share for each purchase, and any sales (along with documentation establishing membership in the Settlement Class). Any objection must be also be mailed or delivered such that it is received by all of the following no later than **January 21, 2021**:

| Lead Counsel  | Claims Administrator   | Defendants' Counsel   |
|---|--|---|
| Takeo Kellar, Esq.<br>Ian Berg, Esq.<br>ABRAHAM, FRUCHTER<br>& TWERSKY LLP<br>11622 El Camino Real, Ste. 100<br>San Diego, CA 92130 | Finisar Securities Litigation<br>c/o Claims Administrator<br>1650 Arch Street Suite 2210<br>Philadelphia, PA 19103 | Shirli Fabbri Weiss, Esq.<br>David Priebe, Esq.<br>DLA PIPER LLP (US)<br>2000 University Avenue<br>East Palo Alto, CA 94303 |

## 19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. To be clear, if you exclude yourself, you should not also file an objection to the settlement.

If you file an objection to the Settlement but fail to submit a timely Claim Form as described in Question 10, you may be deemed to have release all of the Released Claims against Defendants as set forth in Question 14 above but will receive no proceeds under the Settlement.

## THE COURT'S SETTLEMENT HEARING

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement (the "Settlement Hearing"). You may attend and you may ask to speak, but you do not have to. The Court will hold a **hearing at 9:00 a.m., on February 11, 2021**, at United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Courtroom 4, 5<sup>th</sup> Floor, San Jose, CA 95113.

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also consider how much of a fee and expense award to grant Lead Counsel and whether the Plan of Allocation is fair, reasonable, and adequate. The Court may decide these issues at the hearing or take them under consideration for a later decision. We do not know how long these decisions will take.

Please note that the date of the Settlement Hearing may change without further formal notice. Therefore, Settlement Class Members who intend to appear at the hearing as discussed in Item 22 below should access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER)

system at <https://ecf.cand.uscourts.gov>, or check the settlement website, [www.FinisarSecuritiesLitigation.com](http://www.FinisarSecuritiesLitigation.com), to confirm that the date has not been changed.

## **21. Do I have to come to the hearing?**

No. Lead Counsel will answer any questions Judge Edward J. Davila may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## **22. May I speak at the hearing?**

Only Settlement Class Members who have filed and delivered valid and timely written notices of objection and requested an opportunity to speak will be entitled to be heard at the hearing on February 11, 2021. To do so, you must send a letter saying that it is your intention to appear at the Settlement Hearing in *In re Finisar Corporation Securities Litigation*, Case No. 5:11-CV-01252-EJD. Be sure to include your name, address, telephone number, your signature, the number of shares of Finisar stock you owned as of the opening of trading on December 2, 2010, the number of shares of Finisar stock you purchased during the Class Period (i.e., December 2, 2010 through March 8, 2011, inclusive), the dates of such purchases, the prices paid per share for each purchase, and any sales. If you intend to call any witnesses to testify or introduce any exhibits into evidence at the Settlement Hearing, you must also identify them in the letter. Your notice of intention to appear must be received no later than January 21, 2021, the Clerk of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Room 2112, San Jose, CA 95113, and the Parties' counsel at the addresses listed in Question 18. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

## **IF YOU DO NOTHING**

### **23. What happens if I do nothing at all?**

If you do nothing, you will be a Settlement Class Member. But you will not receive any money from this Settlement unless you submit a Claim Form. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the Released Claims in this case.

## **GETTING MORE INFORMATION**

### **24. Are there more details about the settlement?**

This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about matters involved in this Action, you may visit the website, [www.FinisarSecuritiesLitigation.com](http://www.FinisarSecuritiesLitigation.com), where you can access copies of the Stipulation, the Complaint, and any related orders entered by the Court. Alternatively, you may access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, 2<sup>nd</sup> floor, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

All inquiries concerning this Notice and the Claim Form should be directed to:

Claims Administrator:  
Finisar Securities Litigation  
c/o Claims Admin  
1650 Arch Street Suite 2210  
Philadelphia, PA 19103  
Telephone: (833) 935-2722  
www.FinisarSecuritiesLitigation.com  
Info@FinisarSecuritiesLitigation.com

Lead Counsel:  
Ian Berg, Esq. (iberg@aftlaw.com)  
Takeo Kellar, Esq. (tkellar@aftlaw.com)  
ABRAHAM FRUCHTER & TWERSKY LLP  
11622 El Camino Real, Suite 100  
San Diego, CA 92130  
Telephone: (858) 764-2580

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

Dated: October 1, 2020

By Order of the Court  
United States District Court  
Northern District of California

**SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES**

The Court has ordered that if you hold or held any Finisar stock purchased or acquired between December 2, 2010 and March 8, 2011, inclusive, as nominee for a beneficial owner, then, **WITHIN SEVEN (7) CALENDAR DAYS** after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such Persons; or (2) provide a list of the names and addresses of such persons to the Claims Administrator (send email to Info@FinisarSecuritiesLitigation.com or see Answer to Question 24 for additional contact information).

If you choose to mail the Notice and Claim Form yourself, you may obtain from the Claims Administrator as many additional copies of these documents as you will need to complete the mailing. If you do not intend to comply with the provision of this section, you are requested to notify the Claims Administrator of that fact. Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for reasonable administrative costs actually incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.