

OCLARO, INC.  
Form 425  
July 09, 2012

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): July 6, 2012**

**OPNEXT, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-33306**  
(Commission  
File Number)

**22-3761205**  
(IRS Employer  
Identification No.)

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46429 Landing Parkway, Fremont, California 94538

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (510) 580-8828

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

**Item 8.01. Other Events.**

On July 6, 2012, Opnext, Inc. ( Opnext ) reached an understanding to settle the previously disclosed class action lawsuit in California captioned Martin Zilberberg v. Charles J. Abbe, No. RG12623460 (and the cases consolidated with the Zilberberg action, other than the Wright action, which was voluntarily dismissed on July 5, 2012) and the previously disclosed class action lawsuit in Delaware captioned In re Opnext, Inc. Shareholders Litigation, C.A. No. 7400-VCL (collectively, the Merger Litigation ). The Merger Litigation relates to the Agreement and Plan of Merger, dated as of March 26, 2012, by and among Oclaro, Inc., a Delaware corporation ( Oclaro ), Tahoe Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Oclaro, and Opnext. On July 6, 2012, Opnext issued a press release announcing the settlement of the Merger Litigation. A copy of this press release is attached hereto as Exhibit 99.1.

**Item 9.01. Financial Statements and Exhibits**

**(d) Exhibits**

| <b>Exhibit No.</b> | <b>Description</b>                                       |
|--------------------|--|
| 99.1               | Press Release dated July 6, 2012, issued by Opnext, Inc. |

**Additional Information and Where to Find It**

This communication is being made in respect of the proposed business combination involving Opnext and Oclaro. In connection with the proposed transaction, each of Opnext and Oclaro has mailed a Joint Proxy Statement/Prospectus (the Proxy Statement ) to its stockholders, and each of Opnext and Oclaro may file other documents with the SEC regarding the proposed transaction. Investors and security holders of Opnext and Oclaro are urged to carefully read the Proxy Statement and other documents filed with the SEC by Opnext and Oclaro as they will contain important information about the proposed transaction. Investors and security holders may obtain free copies of the documents filed with the SEC on Opnext s website at [www.opnext.com](http://www.opnext.com) or Oclaro s website at [www.oclaro.com](http://www.oclaro.com) or the SEC s website at [www.sec.gov](http://www.sec.gov). Opnext, Oclaro and their respective directors and executive officers may be deemed participants in the solicitation of proxies with respect to the proposed transaction. Information regarding the interests of these directors and executive officers in the proposed transaction is included in the Proxy Statement. Additional information regarding the directors and executive officers of Opnext is also included in Opnext s Form 10-K for the fiscal year ended March 31, 2012, which was filed with the SEC on June 8, 2012.

### Cautionary Statement Regarding Forward-Looking Statements

Certain of the statements in this release are forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 that are not limited to historical facts, but reflect Opnext's and Oclaro's current beliefs, expectations or intentions regarding future events. Words such as may, will, could, should, expect, plan, project, intend, anticipate, believe, estimate, pursue, target, continue, and similar expressions are intended to identify such forward-looking statements. These forward-looking statements include, without limitation, Opnext's and Oclaro's expectations with respect to the anticipated financial benefits of the proposed transaction; approval of the proposed transaction by stockholders; the satisfaction of the closing conditions to the proposed transaction; and the timing of the completion of the proposed transaction. All forward-looking statements involve significant risks and uncertainties that could cause actual results to differ materially from those in the forward-looking statements, many of which are generally outside the control of Opnext and Oclaro and are difficult to predict. Examples of such risks and uncertainties include, but are not limited to: (i) the failure of the merger to close for any reason; (ii) the competitive position and opportunities for the combined company; (iii) general business and economic conditions; (iv) the performance of financial markets; (v) risks relating to the consummation of the contemplated merger, including the risk that required stockholder approval and regulatory agencies might not be obtained in a timely manner or at all or that other closing conditions are not satisfied; (vi) the impact on the merger on the markets for the combined companies' optical, industrial and consumer products; (vii) the failure of the combined company to realize synergies and cost-savings from the transaction or delay in realization thereof; (viii) the businesses or employees of Opnext and Oclaro not being combined and integrated successfully, or such combination taking longer or being more difficult, time-consuming or costly to accomplish than expected; (ix) operating costs and business disruption following the merger, including adverse effects on employee retention and on our business relationships with third parties; (x) the future performance of the combined company following the closing of the merger; (xi) the combined company's ability to maintain gross margins; (xii) effects of fluctuating product mix on results; (xiii) the combined company's ability to timely develop and commercialize new products; (xiv) the combined company's ability to respond to evolving technologies and customer requirements; (xv) the combined company's dependence on a limited number of customers for a significant percentage of its projected revenues; (xvi) the combined company's ability to effectively compete with companies that have greater name recognition, broader customer relationships and substantially greater financial, technical and marketing resources; (xvii) increased costs related to downsizing and compliance with regulatory requirements in connection with such downsizing, competition and pricing pressure; (xviii) the combined company's potential lack of availability of credit or opportunity for equity based financing; (xix) the combined company's risks associated with international operations; (xx) the combined company's outcome of tax audits or similar proceedings; (xxi) the outcome of litigation pending against Opnext or Oclaro and (xxii) the parties' ability to successfully negotiate a final settlement agreement, or the Delaware and California courts' approval of such a settlement. Additional factors that can cause the results to materially differ than those described in the forward-looking statements can be found in the most recent Form 10-Q, most recent Form 10-K and other periodic reports filed by Opnext and Oclaro with the SEC. They each anticipate subsequent events and developments may cause their views and expectations to change. Neither Opnext nor Oclaro assumes any obligation, and they specifically disclaim any intention or obligation, to update any forward-looking statements, whether as a result of new information, future events or otherwise.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Opnext, Inc.

Date: July 6, 2012

By: /s/ Robert J. Nobile  
Robert J. Nobile

Chief Financial Officer and Senior Vice President, Finance

**EXHIBIT INDEX**

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