

ACTUATE CORP  
Form 10-Q  
May 08, 2009  
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**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 March 31, 2009

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 No. 0-24607

**Actuate Corporation**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State of incorporation)

**94-3193197**  
(I.R.S. Employer  
Identification No.)

**2207 Bridgepointe Parkway, Suite 500**

**San Mateo, California 94404**

**(650) 645-3000**

(including area code, of Registrant's principal executive offices)

**Former name, former address and former fiscal year, if changed since last report: None**

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 (§232.405 of this chapter) 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 definition 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 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

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date.

Title of Class	Outstanding as of March 31, 2009
Common Stock, par value \$.001 per share	44,698,142

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**Actuate Corporation**

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(in thousands except share and per share data)

(unaudited)

	March 31, 2009	December 31, 2008
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 30,499	\$ 24,772
Short-term investments	16,274	17,278
Accounts receivable, net of allowance of \$663 and \$606 at March 31, 2009 and December 31, 2008, respectively	24,487	28,017
Other current assets	7,455	6,620
<b>Total current assets</b>	<b>78,715</b>	<b>76,687</b>
Property and equipment, net	4,683	4,729
Goodwill	36,114	36,114
Other purchased intangibles, net	1,575	1,800
Non-current deferred tax assets	12,575	12,602
Non-current investments	16,391	16,391
Other assets	2,064	2,189
	<b>\$ 152,117</b>	<b>\$ 150,512</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 1,415	\$ 2,067
Restructuring liabilities	2,928	3,206
Accrued compensation	4,564	4,514
Other accrued liabilities	4,549	5,299
Income tax payable	444	
Deferred revenue	40,479	40,900
<b>Total current liabilities</b>	<b>54,379</b>	<b>55,986</b>
Long-term liabilities:		
Note payable	30,000	30,000
Other liabilities	982	1,054
Long-term deferred revenue	2,122	2,472
Long term income tax payable	1,594	1,660
Restructuring liabilities, less current portion	2,308	3,092
<b>Total long-term liabilities</b>	<b>37,006</b>	<b>38,278</b>

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Noncontrolling interest in subsidiary	607	584
Stockholders' equity:		
Preferred stock, \$0.001 par value, issuable in series: 5,000,000 shares authorized; none issued and outstanding		
Common stock, \$0.001 par value, 100,000,000 shares authorized; issued 76,042,554 and 75,514,061 shares, respectively; outstanding 44,698,142 and 44,169,649 shares, respectively	45	44
Additional paid-in capital	163,379	160,619
Treasury stock, at cost 31,344,412 shares	(117,280)	(117,256)
Accumulated other comprehensive loss	(1,966)	(887)
Retained earnings	15,947	13,144
Total stockholders' equity	60,125	55,664
	\$ 152,117	\$ 150,512

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**ACTUATE CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**

(in thousands, except per share data)

(unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>Revenues:</b>		
License fees	\$ 8,753	\$ 7,610
Maintenance	18,371	17,738
Professional services and training	2,132	4,173
<b>Total revenues</b>	<b>29,256</b>	<b>29,521</b>
<b>Costs and expenses:</b>		
Cost of license fees	200	326
Cost of services	4,740	6,275
Sales and marketing	10,710	13,138
Research and development	5,050	5,631
General and administrative	5,075	4,721
Amortization of other purchased intangibles	170	237
Restructuring charges	41	142
<b>Total costs and expenses</b>	<b>25,986</b>	<b>30,470</b>
<b>Income (loss) from operations</b>	<b>3,270</b>	<b>(949)</b>
Interest and other income (loss), net	472	(375)
Interest expense	(355)	(3)
<b>Income (loss) before income taxes</b>	<b>3,387</b>	<b>(1,327)</b>
Provision (benefit) for income taxes	584	(4,234)
<b>Net income</b>	<b>\$ 2,803</b>	<b>\$ 2,907</b>
<b>Basic net income per share</b>	<b>\$ 0.06</b>	<b>\$ 0.05</b>
Shares used in basic per share calculation	44,456	60,904
<b>Diluted net income per share</b>	<b>\$ 0.06</b>	<b>\$ 0.04</b>
Shares used in diluted per share calculation	47,556	67,277

The accompanying notes are an integral part of these condensed consolidated financial statements.

**Table of Contents****ACTUATE CORPORATION****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands, unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>Operating activities</b>		
Net income	\$ 2,803	\$ 2,907
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock based compensation expense related to stock options and employee stock purchase	1,605	2,552
Amortization of other purchased intangibles	225	382
Amortization of debt issuance cost	70	
Depreciation	533	559
Net operating loss utilizations related to prior acquisitions		(228)
Accretion of discount on short-term debt securities	79	45
Changes in operating assets and liabilities:		
Accounts receivable, net	3,530	16,821
Other current assets	(261)	(558)
Accounts payable	(645)	(1,576)
Accrued compensation	50	(2,406)
Other accrued liabilities	(482)	(1,324)
Deferred tax assets	41	(48)
Income taxes payable/receivable	(221)	(4,107)
Other deferred liabilities	(73)	261
Restructuring liabilities	(1,062)	(724)
Deferred revenue	(771)	(314)
<b>Net cash provided by operating activities</b>	<b>5,421</b>	<b>12,242</b>
<b>Investing activities</b>		
Purchases of property and equipment	(486)	(702)
Proceeds from maturity of investments	4,523	35,542
Purchases of investments	(3,787)	(27,157)
Proceeds from security deposits	23	
<b>Net cash provided by investing activities</b>	<b>273</b>	<b>7,683</b>
<b>Financing activities</b>		
Proceeds from issuance of common stock	1,179	2,130
Cost of treasury stock	(256)	(10,000)
<b>Net cash provided by (used in) financing activities</b>	<b>923</b>	<b>(7,870)</b>
Net increase in cash and cash equivalents	6,617	12,055
Effect of exchange rates on cash and cash equivalents	(890)	1,366
Cash and cash equivalents at the beginning of the period	24,772	21,468
<b>Cash and cash equivalents at the end of the period</b>	<b>\$ 30,499</b>	<b>\$ 34,889</b>

The accompanying notes are an integral part of these condensed consolidated financial statements.





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**ACTUATE CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(Unaudited)**

**1. Summary of Significant Accounting Policies**

***Basis of Presentation***

The consolidated financial statements include the accounts of Actuate and its wholly-owned and majority-owned subsidiaries. Actuate has offices throughout North America, Europe and Asia including offices in the United States, Switzerland, United Kingdom, Germany, Singapore, Japan and China. All intercompany balances and transactions have been eliminated.

As of March 31, 2009, Actuate owns approximately 88% of the outstanding voting stock of Actuate Japan Company Ltd. ( Actuate Japan ). The Company has consolidated the results of Actuate Japan from the date that it became the majority shareholder, which occurred in fiscal year 2000. During the first quarter of fiscal 2009, the Company adopted FASB Statement No. 160, Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51. The standard requires the Company to clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. In addition, the Company applied the measurement guidance upon adoption of March 2008 updates to EITF D-98 effective January 1, 2009 and retrospectively applied the disclosures for all periods presented. The Company measures a redeemable non-controlling interest at the greater of its EITF D-98 measurement amount (calculated redemption value of the put option embedded in the noncontrolling interest) or its ARB 51 measurement amount. The adjustments to the measurement amount for increases or decreases in each reporting period will be to additional paid-in capital. For the periods starting January 1, 2009 the Company will adjust net income or loss each period for the amount attributable to the noncontrolling interest. The Company will also adjust comprehensive income or loss each period for the amount attributable to the noncontrolling interest. Upon adoption of the March 2008 updates to EITF-98 the Company will adjust the numerator of earnings per share calculations for the current period change in the excess of the noncontrolling interest's EITF D-98 measurement amount over its ARB 51 measurement amount ( gross changes approach).

The Company consolidates Actuate Japan's financial results, which are reflected in each revenue, cost of revenue and expense category in consolidated statement of operations. Through March 31, 2009, the operating performance and liquidity requirements of Actuate Japan had not been material to the results of operations or financial condition. Although the Company plans to maintain and expand selling and marketing activities in Japan to add new customers, the future liquidity requirements of Actuate Japan will not be significant.

***Revenue Recognition***

Actuate generates revenues from the sales of software licenses and related services. The Company receives software license revenues from licensing its products directly to end-users and indirectly through resellers, system integrators and original equipment manufacturers (OEMs). The Company receives service revenues from maintenance contracts, consulting services and training that Actuate performs for customers.

Actuate recognizes revenues in accordance with AICPA Statement of Position ( SOP ) 97-2 ( SOP 97-2 ), *Software Revenue Recognition*, as amended and modified by SOP 98-9, *Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions*. For sales to end-user customers, Actuate recognizes license revenues when a license agreement has been signed by both parties or a definitive agreement has been received from the customer, the product has been shipped, there are no unusual uncertainties surrounding the product acceptance, the fees are fixed or determinable, collectibility is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement. Vendor-specific objective evidence of sales to end users is based on the price charged when an element is sold separately. Actuate has not established vendor-specific objective evidence of fair value for its licenses. Therefore, the Company recognizes revenues from arrangements with multiple elements involving software licenses under the residual method. If the license agreement contains payment terms that would indicate that the fee is not fixed or determinable, revenues are recognized as the payments become due and payable, assuming that all other revenue recognition criteria are met.

Actuate enters into reseller and distributor arrangements that typically give such distributors and resellers the right to distribute its products to end-users headquartered in specified territories. Actuate recognizes license revenues from arrangements with U.S. resellers and distributors when there is persuasive evidence of an arrangement with the reseller or distributor, the product has been shipped, the fees are fixed or determinable, and collectibility is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement. Actuate recognizes license revenues from arrangements with international resellers and distributors upon receipt of evidence of sell-through and when all other revenue recognition criteria have been met. If it is not practical to obtain evidence of sell-through,

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the Company defers revenues until the end-user has been identified and cash has been received. In some instances there is a timing difference between when a reseller completes its sale to the end-user and the period in which Actuate receives the documentation required for revenue recognition. Because Actuate delays revenue recognition until the reporting period in which the required documentation is obtained, it may recognize revenue in a period subsequent to the period in which the reseller completes the sale to its end-user.

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Actuate also enters into OEM arrangements that provide for license fees based on the bundling or embedding of its products with the OEM's products. These arrangements generally provide for fixed, irrevocable royalty payments. Actuate recognizes license fee revenues from U.S. and international OEM arrangements when a license agreement has been executed by both parties, the product has been shipped, there are no unusual uncertainties surrounding the product acceptance, the fees are fixed or determinable, collectibility is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement.

Credit-worthiness and collectibility for end-users are assessed based on payment history and current credit profile. When a customer is not deemed credit-worthy, revenues are deferred and recognized upon cash receipt.

Actuate recognizes maintenance revenues, which consist of fees for ongoing support and unspecified product updates, ratably over the term of the contract, typically one year. Consulting revenues are primarily related to standard implementation and configuration. Training revenues are generated from classes offered at the Company's headquarters and customer locations. Revenues from consulting and training services are typically recognized as the services are performed. When a contract includes both license and service elements, the license fee is typically recognized on delivery of the software, assuming all other revenue recognition criteria are met, provided services do not include significant customization or modification of the product and are not otherwise essential to the functionality of the software.

A significant portion of our revenues have historically been derived from customers in the financial services industry. The Company expects that it will continue to derive a significant portion of its revenues from these financial services customers for the foreseeable future. Unfavorable economic conditions have adversely impacted the financial services industry throughout fiscal 2008 and the first quarter of fiscal 2009. If this trend continues further into 2009, it will likely have a material adverse effect on the Company's business, financial condition and results of operations.

**Share-Based Compensation**

The Company has various types of share-based compensation plans. These plans are administered by the compensation committee of the Board of Directors, which selects persons to receive awards and determines the number of shares subject to each award and the terms, conditions, performance measures and other provisions of the award. Readers should refer to Note 9 of the Company's consolidated financial statements in the Annual Report on Form 10-K for the fiscal year ended December 31, 2008, for additional information related to these share-based compensation plans.

Share-based compensation expense and the related income tax benefit recognized under Statement of Financial Accounting Standards, or SFAS No. 123R, "Share-Based Payment" in the Condensed Consolidated Statements of Income in connection with stock options and the Employee Stock Purchase Plan (ESPP) for the three months ended March 31, 2009 and 2008 were as follows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
Stock Options	\$ 1,349	\$ 2,345
ESPP	256	207
<b>Total share-based compensation</b>	<b>\$ 1,605</b>	<b>\$ 2,552</b>
Income tax benefit	\$ 501	\$ 825

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The fair value of each option award is estimated on the date of grant using the Black-Scholes-Merton option pricing model. We estimated the expected term of options granted by analyzing actual historical experience of exercises and cancellations under our plan. We also looked at the average length of time in which our current outstanding options are expected to be exercised or cancelled based on past experience and the vesting and contractual term. We estimated the volatility of our common stock by using historical volatility over the calculated expected term. We based the risk-free interest rate that we use in the option valuation model on the published Treasury rate. We do not anticipate paying any cash dividends in the foreseeable future and therefore used an expected dividend yield of zero in the option valuation model. The assumptions used to estimate the fair value of stock options granted and stock purchase rights granted under our Employee Stock Purchase Plan (the "Purchase Plan") for the three months ended March 31, 2009 and 2008 are as follows:

	Options		ESPP	
	Three Months Ended March 31, 2009	Three Months Ended March 31, 2008	Three Months Ended March 31, 2009	Three Months Ended March 31, 2008
Volatility	59.03%	71.49%	94.69%	55.79%
Expected term (years)	5.49	5.55	0.5	0.5
Risk free interest rate	1.75%	2.50%	0.62%	2.05%
Expected dividend yield	0%	0%	0%	0%

In February 2009, the Company granted additional stock options totaling 400,000 shares to its President and Chief Executive Officer ( "CEO"), Mr. Peter Cittadini and 40,000 shares to its Senior Vice President and Chief Financial Officer ( "CFO"), Mr. Daniel Gaudreau. These grants have a shorter term life and therefore require a separate set of assumptions for valuation purposes. For the first quarter of fiscal 2009, the assumptions used for volatility, expected term, risk free interest rate and expected dividend yield were 59.66%, 3.58 years, 1.375% and 0%, respectively.

**Net Income Per Share**

Basic net income per share has been computed using the weighted-average number of shares of common stock outstanding during the period. Diluted net income per share is computed using the weighted-average number of common and dilutive common equivalent shares outstanding during the period. Common equivalent shares consist of the shares issuable upon the exercise of stock options using the treasury stock method.

Adjustment to the numerator of earnings per share calculated subsequent to the adoption of the March 2008 updates to EITF D-98 for the current period change in the excess of the noncontrolling interest's EITF D-98 measurement amount over its ARB 51 measurement amount ( "gross changes" approach) does not have a significant impact on earnings per share in the current period.

The table below reconciles the weighted average common shares used to calculate basic net income per share with the weighted-average common shares used to calculate diluted net income per share (in thousands):

	Three Months Ended March 31,	
	2009	2008
Weighted-average common shares outstanding	44,456	60,904
Weighted-average dilutive stock options outstanding under the treasury stock method	3,100	6,373
Weighted-average common shares used in computing diluted net income per share	47,556	67,277

Under the treasury stock method, stock options with exercise prices exceeding the average share price of the Company's common stock during the applicable period are excluded from the diluted earnings per share computation. The weighted-average number of shares excluded from the calculation of diluted net income was 10,662,514 for the three months ended March 31, 2009. In the first quarter of fiscal year 2008, the Company excluded 3,048,978 stock options from its calculation of weighted-average common shares used in computing dilutive net income per share. Such stock options, had they been dilutive, would have been included in the computation of diluted net income per share.

The weighted average exercise price of excluded stock options was \$5.06 and \$7.34 for the quarters ended March 31, 2009 and 2008, respectively.

*Income Taxes*

The Company calculates its interim income tax provision in accordance with Accounting Principles Board Opinion No. 28, Interim Financial Reporting and FASB Interpretation No. 18, Accounting for Income Taxes in Interim Periods (FIN 18). At the end of each interim period, the Company estimates the annual effective tax rate and applies that rate to its ordinary quarterly earnings. The tax expense or benefit related to significant, unusual, or extraordinary items that will be separately reported or reported net of their related tax effect, are recognized in the interim period in which those items occur. In addition, the effect of changes in enacted tax laws or rates or tax status is recognized in the interim period in which the change occurs.

The computation of the annual estimated effective tax rate at each interim period requires certain estimates and significant judgment including, but not limited to, the expected operating income for the year, projections of the proportion of income earned and taxed in foreign jurisdictions, permanent and temporary differences, and the likelihood of recovering deferred tax assets generated in the current year. The accounting estimates used to compute the provision for income taxes may change as new events occur, more experience is acquired, additional information is obtained or as the tax environment changes.

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The Company recognizes and measures uncertain tax positions in accordance with the Financial Accounting Standards Board ( FASB ) issued Financial Interpretation No. ( FIN ) 48, *Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109*, whereby the Company only recognizes the tax benefit from an uncertain tax position if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement.

**Comprehensive Income**

Other comprehensive income includes currency translation adjustments and unrealized losses on investments that are not included in net income, but rather are recorded directly in stockholders' equity. Comprehensive income during the first quarter of fiscal 2009 and 2008 was comprised of the following (in thousands):

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2009</b>	<b>2008</b>
Net income	\$ 2,803	\$ 2,907
Foreign currency translation adjustment	(890)	1,366
Net unrealized loss on securities	(189)	(654)
Comprehensive income	\$ 1,724	\$ 3,619

The Company had approximately \$890,000 in foreign currency translation losses in the first quarter of fiscal 2009. This loss related primarily to the translation and consolidation of its European operations. These losses were significantly higher during the first quarter of fiscal 2009 as compared to gains reported in fiscal 2008 due primarily to the weakness of the British Pound and the Euro against the U.S. Dollar in the first quarter of fiscal 2009.

**Summary of Significant Accounting Policies**

The Company has prepared the accompanying unaudited condensed consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual consolidated financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP). In management's opinion, the Company has made all adjustments (consisting only of normal, recurring adjustments, except as otherwise indicated) necessary to fairly present its financial position, results of operations and cash flows. The Company's interim period operating results do not necessarily indicate the results that may be expected for any other interim period or for the full fiscal year. These financial statements and accompanying notes should be read in conjunction with the consolidated financial statements and notes thereto in Actuate's Annual Report on Form 10-K for the fiscal year ended December 31, 2008 filed with the SEC on March 12, 2009.

To prepare financial statements in conformity with GAAP, management must make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Actual results could differ from these estimates and may result in material effects on the Company's operating results and financial position.

*Principles of Consolidation.* The consolidated financial statements include the accounts of the Company and all of its subsidiaries. All significant intercompany accounts and transactions have been eliminated.

**Recent Accounting Pronouncements**

In April 2009, the FASB issued Staff Position FAS 107-1 and Accounting Principles Board Opinion 28-1, *Interim Disclosures about Fair Value of Financial Instruments*. The position amends FASB Statement No. 107, *Disclosures about Fair Value of Financial Instruments*, to require disclosures about fair value of financial instruments for interim reporting periods as well as in annual financial statements. The position also amends APB Opinion No. 28, *Interim Financial Reporting*, to require those disclosures in summarized financial information at interim reporting periods. The position is effective for interim periods ending after June 15, 2009 with early adoption permitted. The Company plans to adopt SFAS 107-1 and APB 28-1 and provide the additional disclosures in the second quarter of 2009.

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On January 1, 2009, we adopted the provisions of SFAS No. 141 (Revised 2007), Business Combinations (SFAS No. 141(R)), which retains the underlying concepts of SFAS No. 141 in that all business combinations are still required to be accounted for at fair value under the acquisition method of accounting, but changes the method of applying the acquisition method in a number of ways. Acquisition costs are no longer considered part of the fair value of an acquisition and will generally be expensed as incurred, non-controlling interests are valued at fair value at the acquisition date, in-process research and development is recorded at fair value as an indefinite-lived intangible asset at the acquisition date, restructuring costs associated with a business combination are generally expensed subsequent to the acquisition date, and changes in deferred tax asset valuation allowances and income tax uncertainties after

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the acquisition date generally will affect income tax expense. In April 2009, the FASB issued FSP SFAS 141(R)-1, *Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies*, which amends the guidance in SFAS No. 141(R) to require contingent assets acquired and liabilities assumed in a business combination to be recognized at fair value on the acquisition date if fair value can be reasonably estimated during the measurement period. If fair value cannot be reasonably estimated during the measurement period, the contingent asset or liability would be recognized in accordance with SFAS No. 5, *Accounting for Contingencies*, and FASB Interpretation (FIN) No. 14, *Reasonable Estimation of the Amount of a Loss*. Further, this FSP eliminated the specific subsequent accounting guidance for contingent assets and liabilities from Statement 141(R), without significantly revising the guidance in SFAS No. 141. However, contingent consideration arrangements of an acquiree assumed by the acquirer in a business combination would still be initially and subsequently measured at fair value in accordance with SFAS No. 141(R). The Company adopted the FSP on January 1, 2009.

In November 2008, the FASB ratified Emerging Issues Task Force (EITF) Issue No. 08-6, *Equity Method Investment Accounting Considerations*. EITF 08-6 clarifies the accounting for certain transactions and impairment considerations involving equity method investments. EITF 08-6 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. We do not currently have any investments that are accounted for under the equity method. EITF 08-6 was adopted January 1, 2009 and did not have a material effect on our consolidated financial statements.

In April 2008, the FASB issued FASB Staff Position (FSP) FAS 142-3, *Determination of the Useful Life of Intangible Assets*. FSP FAS 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under FASB Statement No. 142, *Goodwill and Other Intangible Assets*. FSP FAS 142-3 was adopted effective January 1, 2009 and did not have a material effect on our consolidated financial statements.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, *Disclosures about Derivative Instruments and Hedging Activities – an amendment of FASB Statement No. 133*. Companies are required to provide enhanced disclosures about how and why an entity uses derivative instruments, how derivative instruments and related hedged items are accounted for under FASB Statement No. 133, and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. The Company adopted SFAS 161 on January 1, 2009. The adoption of SFAS 161 did not have a material impact on the consolidated financial statements.

In September 2006, the FASB issued Statement No. 157, *Fair Value Measurements*. Statement 157 defines fair value, establishes a framework for measuring fair value and expands fair value measurement disclosures. In February 2008, the FASB issued FASB Staff Position No. FAS 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13* and FASB Staff Position No. FAS 157-2, *Effective Date of FASB Statement No. 157*. Collectively, the Staff Positions defer the effective date of Statement 157 to fiscal years beginning after November 15, 2008 for nonfinancial assets and nonfinancial liabilities except for items that are recognized or disclosed at fair value on a recurring basis at least annually, and amend the scope of Statement 157. In addition, in October 2008 the FASB issued FASB Staff Position FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, which clarified the application of how the fair value of a financial asset is determined when the market for that financial asset is inactive. FSP No. 157-3 was effective upon issuance, including prior periods for which financial statements had not been issued. Effective January 1, 2009, the Company adopted SFAS 157 for all nonfinancial assets and nonfinancial liabilities measured at fair value on a nonrecurring basis. Examples include goodwill, intangibles, and other long-lived assets. The adoption of SFAS 157 did not have a material impact on the consolidated financial statements, results of operations, or cash flows.

In April 2009 The FASB issued FASB Staff Position FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*. FAS 157-4 provides additional guidance for estimating fair value in accordance with FASB Statement No. 157, *Fair Value Measurements*, when the volume and level of activity for the asset or liability have significantly decreased. FAS 157-4 also includes guidance on identifying circumstances that indicate a transaction is not orderly. FAS 157-4 is effective for interim and annual periods ending after June 15, 2009. We expect to adopt FAS 157-4 in the quarterly period ended June 30, 2009. We have not evaluated FAS 157-4 and its effect, if any, on our consolidated financial statements.

In April 2009 The FASB issued FASB Staff Positions FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*. These positions amend the other-than-temporary impairment guidance in US GAAP for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. FAS 115-2 and FAS 124-2 are effective for interim and annual periods ending after June 15, 2009. Actuate expects to adopt FAS 115-2 and FAS 124-2 in the quarterly period ended June 30, 2009. We have not evaluated FAS 115-2 and FAS 124-2 and their effects, if any, on our consolidated financial statements.





**Table of Contents****2. Investment in Actuate Japan**

*Noncontrolling (minority) Interest* - The minority shareholder of Actuate Japan has a non-expiring option to put its equity interest (non-controlling interest) in Actuate Japan to the Company and the Company has the option to call the Non-controlling interest. The redeemable non-controlling interest as of March 31, 2009 was approximately 12% of the total equity interest. If the non-controlling interest shareholder chose to put these remaining shares to the Company, Actuate would be required to pay approximately \$607,000 to purchase these shares. The Company measures and discloses a redeemable non-controlling interest in accordance with the policy discussed above at the calculated redemption value of the put option embedded in the non-controlling interest. The non-controlling shareholder is also a distributor of Actuate products in Japan, although the volume of revenues sold through this distributor has historically been immaterial to Actuate Corporation. The Company consolidated 100% of the operating results and all investments in the subsidiary are eliminated in consolidation. Through March 31, 2009, the operating performance and liquidity requirements of Actuate Japan had not been material to the Company's results of operations or financial condition. Although the Company plans to maintain and expand our selling and marketing activities in Japan to add new customers, the future liquidity requirements of Actuate Japan is not expected to be significant in the near future. As of the date of this filing, the remaining non-controlling shareholder has not notified the Company of any intent to exercise its put option.

**3. Fair Value Measurements of Financial Assets and Liabilities**

The Company has investments that are valued in accordance with the provisions of SFAS 157. SFAS 157 establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

Level 1 Valuations based on quoted prices in active markets for identical assets that the Company has the ability to access.

Level 2 Valuations based inputs on other than quoted prices included within level 1, for which all significant inputs are observable, either directly or indirectly.

Level 3 Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

The following table represents information about the Company's investments measured at fair value on a recurring basis (in thousands).

	Fair value of investments as of March 31, 2009			
	Total	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	\$ 7,895	\$ 7,895	\$	\$
Corporate bonds	14,064		14,064	
Federal and municipal obligations	2,210		2,210	
ARS	14,600			14,600
Put Option	1,791			1,791
	\$ 40,560	\$ 7,895	\$ 16,274	\$ 16,391

Certain items in the table above are classified as Level 2 items because quoted prices in an active market are not readily accessible for those specific financial assets, and the Company may have relied on alternative pricing methods that do not rely exclusively on quoted prices to determine the fair value of the investments.

Our investment portfolio includes Auction Rate Securities (ARS) which are investments with contractual maturities. They are usually found in the form of municipal bonds, a pool of student loans or collateralized debt obligations whose interest rates are subject to reset through an auction

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process. The ARS held by us are primarily backed by highly rated municipal issuers.

As of March 31, 2009, the Company had approximately \$16.5 million in ARS at par value. Since February 2008, substantially all auctions for ARS have failed as a result of the negative overall capital market conditions, meaning that there is not enough demand to sell the securities at auction. At March 31, 2009, the Company has classified its entire ARS investment balance as non-current on its Consolidated Balance Sheet because of the Company's inability to determine when its investments in ARS will settle. While the Company continues to earn interest on its ARS investments at the maximum contractual rate, these investments are not currently trading and therefore do not currently have a readily determinable market value.

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In November 2008, the Company elected to participate in a rights offering by UBS, the Company's investment broker, which provides Actuate with rights (the Put Option) to sell UBS \$16.5 million of its ARS portfolio at par value, at any time during a two-year sale period beginning June 30, 2010. By electing to participate in the rights offering, the Company granted UBS the right, exercisable at any time prior to June 30, 2010 or during the two-year sale period, to purchase or cause the sale of our ARS (the Call Right). UBS has stated that it will only exercise the Call Right for the purpose of restructurings, dispositions or other solutions that will provide their clients with par value for their ARS. UBS has agreed to pay their clients the par value of their ARS within one day of settlement of any Call Right transaction. Notwithstanding the Call Right, the Company is permitted to sell ARS to parties other than UBS, in which case the Put Option attached to the ARS that are sold would be extinguished. The Company has classified the Put Option as a non-current investment and has valued the Put Option at the present value of the difference between the fair market value and the par value of the ARS.

The Company has no reason to believe that any of the underlying issuers of its ARS are presently at risk of default. Through March 31, 2009, the Company has continued to receive interest payments on the ARS in accordance with their terms. The Company believes that it will ultimately be able to liquidate its ARS related investments without significant loss primarily due to the collateral securing ARS and the legal settlement it has entered into with UBS. However, it could take until final maturity of the ARS (up to 39 years) to realize the investments' par value. Due to the changes and uncertainty in the ARS market, the Company believes the recovery period for these investments is likely to be longer than 12 months and as a result, the Company has classified these investments as long-term as of March 31, 2009. The Company continues to earn interest on its ARS investments at the maximum contractual rate, which may not exceed the one year trailing average rate on the three month Treasury Bill plus 120 basis points.

The estimated fair value of ARS no longer approximates par value. The Company has used a discounted cash flow model to determine the estimated fair value of its investment in ARS as of March 31, 2009. The assumptions used in preparing the discounted cash flow model include estimates for interest rates, timing and amount of cash flows and expected holding periods of the ARS. Based on this assessment of fair value, as of March 31, 2009 the Company determined there was a decline in the fair value of its ARS investments of \$1.9 million. The Company considered the guidance contained in SEC Staff Accounting Bulletin No. 59, *Other Than Temporary Impairment of Certain Investments in Debt and Equity Securities* (SAB 59) and EITF 03-1 *The Meaning of Other-Than-Temporary Investments and its Application to Certain Investments*, and determined that 100% of this impairment was other-than-temporary at March 31, 2009. An other-than-temporary impairment charge is recorded as a realized loss in the Consolidated Statement of Income and reduces net income for the applicable accounting period. Prior to December 31, 2008, the ARS were classified as available-for-sale and all temporary changes in fair value were recognized in Accumulated Other Comprehensive Income (Loss) on the Company's Consolidated Balance Sheet.

The following table represents the reconciliation of the beginning and ending balances of the Company's ARS and Put Option measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the first quarter of fiscal year 2009 (in thousands).

	<b>Fair Value Measurements Using Significant Unobservable Inputs (Level 3) ARS</b>
Balance at December 31, 2008:	\$ 16,391
Unrealized gain on ARS included in earnings	718
Loss on fair value of Put Option included in earnings	(718)
Balance at March 31, 2009:	\$ 16,391

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The Company's cash, cash equivalents, short-term investments and non-current investments are as follows (in thousands):

	Cost	Gross Unrealized Gains	Gross Unrealized (Losses)	Estimated Fair Value
<b>Balance at March 31, 2009</b>				
Classified as cash and cash equivalents:				
Cash	\$ 22,604	\$	\$	\$ 22,604
Money market funds	7,895			7,895
Federal and municipal obligations				
	30,499			30,499
Classified as short-term investments:				
Corporate bonds	14,219	46	(201)	14,064
Federal and municipal obligations	2,205	5		2,210
	16,424	51	(201)	16,274
Classified as non-current investments:				
ARS	13,882	718		14,600
Put option		1,791		1,791
	13,882	2,509		16,391
<b>Total</b>	<b>\$ 60,805</b>	<b>\$ 2,560</b>	<b>\$ (201)</b>	<b>\$ 63,164</b>

	Cost	Gross Unrealized Gains	Gross Unrealized (Losses)	Estimated Fair Value
<b>Balance at December 31, 2008</b>				
Classified as cash and cash equivalents:				
Cash	\$ 21,947	\$	\$	\$ 21,947
Money market funds	1,050			1,050
Federal and municipal obligations	1,775			1,775
	24,772			24,772
Classified as short-term investments:				
Corporate bonds	11,668	29	(24)	11,673
Federal and municipal obligations	5,570	35		5,605
	17,238	64	(24)	17,278
Classified as non-current investments:				
ARS	16,475		(2,593)	13,882
Put option		2,509		2,509
	16,475	2,509	(2,593)	16,391
<b>Total</b>	<b>\$ 58,485</b>	<b>\$ 2,573</b>	<b>\$ (2,617)</b>	<b>\$ 58,441</b>

At this time, the Company believes that, due to the nature of the Company's investments, the financial condition of the issuer and the Company's ability to hold these investments through these short-term loss positions, factors would not indicate that these unrealized losses on investments,

other than ARS and the Put Option, should be viewed as other-than-temporary.

As of March 31, 2009, the stated maturities of the Company's cash equivalents and short-term investments are \$7.9 million within 90 days and \$16.3 million beyond 90 days. Short-term investments are generally classified as available-for-sale and are recorded on the Company's Consolidated Balance Sheet at fair market value with unrealized gains or losses reported as a separate component of Accumulated Other Comprehensive Income (Loss). At March 31, 2009, Actuate has classified all of its securities (other than ARS) as short-term investments, even though the stated maturity dates may be one year or more beyond the current balance sheet date as these investments are highly liquid and available for use in current operations.

#### **4. Restructuring Charges**

During the first quarter of fiscal year 2009, we incurred \$41,000 in legal fees related to a previous restructuring which involved the terminations of former employees in one of our European subsidiaries. These charges were accounted for in accordance with Financial Accounting Standards (SFAS) No. 146, Accounting for Costs Associated with Exit or Disposal Activities, which requires the recognition of costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan.

Historically restructuring charges have included costs associated with reductions in workforce, exits of idle facilities and disposals of fixed assets. These restructuring charges were based on actual and estimated costs incurred including estimates of sublease income on portions of our idle facilities that we periodically update based on market conditions and in accordance with our restructuring plans. These estimates were impacted by the rules governing the termination of employees, especially those in foreign countries.

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The following table summarizes the restructuring accrual activity during the three months ended March 31, 2009 (in thousands):

	Severance & Benefits	Facility Related	Total
Balance at December 31, 2008	\$ 561	\$ 5,737	\$ 6,298
Restructuring charges	41		41
Cash payments	(231)	(1,223)	(1,454)
Rents collected on the sublease		386	386
Change in estimate	(34)	(1)	(35)
Balance at March 31, 2009	337	4,899	5,236
Less: current portion	(337)	(2,591)	(2,928)
Long-term balance at March 31, 2009	\$	\$ 2,308	\$ 2,308

**5. Segment and Geographic Information**

Our primary operations are located in the United States. Revenues from international sources relate to export sales, primarily to Europe and Asia. Our revenues by geographic area were as follows (in thousands):

	Three Months Ended March 31,	
	2009	2008
North America	\$ 22,614	\$ 19,563
Europe	5,857	8,280
Asia Pacific and others	785	1,678
	\$ 29,256	\$ 29,521

As of March 31, 2009, we operated solely in one segment, which is the development, marketing and support of the Actuate Enterprise Reporting Application Platform. There were no customers that accounted for more than 10% of total revenues in the three months ended March 31, 2009 or 2008.

**6. Goodwill and Other Purchased Intangible Assets***Goodwill*

In accordance with SFAS 142, the Company performs its annual impairment test of goodwill on October 1 of each year. The Company's goodwill balance of \$36.1 million was unchanged at March 31, 2009 when compared to the balance reported at the end of fiscal year 2008.

*Intangibles*

Other purchased intangible assets consist of the following (in thousands):

March 31, 2009			December 31, 2008			
Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Adjustment to Purchase Price Allocation	Net Carrying Amount

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Customer list	\$ 14,000	\$ (12,810)	\$ 1,190	\$ 14,000	\$ (12,640)	\$	\$ 1,360
Purchased technologies	8,002	(7,617)	385	8,430	(7,562)	(428)	440
Trademark	1,500	(1,500)		1,500	(1,500)		
	\$ 23,502	\$ (21,927)	\$ 1,575	\$ 23,930	\$ (21,702)	\$ (428)	\$ 1,800



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Amortization expense of purchased technology and other intangible assets was approximately \$225,000 and \$382,000 for the quarters ended March 31, 2009 and 2008, respectively. Of this total, approximately \$55,000 and \$146,000 was related to the amortization of purchased technology. Amortization of purchased technology is included in cost of license fees in the accompanying condensed consolidated statements of operations. The expected remaining annual amortization expense is summarized as follows (in thousands):

Fiscal Year	Purchased Technology and Intangibles
2009 (remainder of year)	\$ 675
2010	900
	\$ 1,575

**7. Contingencies****General**

We are engaged in certain legal actions arising in the ordinary course of business. Although there can be no assurance as to the outcome of such litigation, we believe we have adequate legal defenses and we believe that the ultimate outcome of any of these actions will not have a material effect on our consolidated financial position or results of operations.

**Revolving credit line**

In November 2008, the Company entered into a four year revolving line of credit agreement with Wells Fargo, LLC ( Credit Agreement ). The Credit Agreement was effective as of November 3, 2008 and allows for cash borrowings and letters of credit under a secured revolving credit facility of up to a maximum of \$50.0 million, but not to exceed 80% of the Company's trailing four quarters of recurring maintenance revenue. As of March 31, 2009, the balance available under the revolving credit facility is approximately \$20.0 million. Interest is based on a floating rate plus an applicable margin based on the outstanding balance of the amount drawn under the Credit Agreement. The floating rate is determined at the Company's election and may either be (i) London Interbank Offered Rate ( LIBOR ) or (ii) the greater of the Federal Funds Rate plus applicable margin and the Prime Rate. If the Company's usage of the credit line exceeds 80% of its trailing four quarters of recurring maintenance revenue, or if the sum of available funds under the Credit Agreement plus available cash is less than \$10.0 million the Company is required to meet certain minimum income targets and be subject to a limit on annual capital expenditures. The Company is required to make interest payments and pay an unused commitment fee on a monthly basis. The Company incurred approximately \$355,000 of interest expense associated with the credit facility during the first quarter of fiscal year 2009. The Credit Agreement also requires that the Company pay a closing fee based on a percentage of the overall available facility. As of March 31, 2009, approximately \$375,000 of costs associated with the credit facility remain accrued including closing fees totaling \$250,000 that are due and payable on the first anniversary of the credit facility in November of fiscal year 2009 and \$125,000 due and payable on the third anniversary in November of fiscal year 2011. These costs are being capitalized and amortized over four years. These costs are classified as current assets if payable within one year or non-current assets if payable beyond one year in the Company's Consolidated Balance Sheet at March 31, 2009.

Because of the Company's indebtedness, a significant portion of the Company's cash flow from operations is and will be required for debt service. The Company's levels of debt could have negative consequences. It should be noted that:

A substantial portion of the Company's cash flow is, and will be, dedicated to debt service and is not, and will not be, available for other purposes;

The Company's ability to obtain additional financing for working capital, capital expenditures, acquisitions and general corporate or other purposes may be impaired in the future;

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The Company's borrowings are, and will be, at variable rates of interest, which may expose the Company to the risk of increases in interest rates;

The Company's level of indebtedness could make it more vulnerable to economic downturns, limit its ability to withstand competitive pressures and reduce the Company's flexibility in responding to changing business and economic conditions.

The Credit Agreement contains financial covenants, which, among other things, require the Company to maintain specified financial ratios and impose certain limitations with respect to lines of business, mergers, investments and acquisitions, additional indebtedness, distributions, guarantees, liens and encumbrances. The Company was in compliance with these financial and non-financial covenants at March 31, 2009. The Company's indebtedness under the Credit Agreement is secured by a lien on (i) substantially all of its assets and the assets of Actuate International Corporation and (ii) by a pledge of all of its stock and a portion of the stock of each of its subsidiaries.

The Company believes that cash flows from operations will be sufficient to meet its current debt service requirements for interest and any required prepayments under the Credit Agreement. However, if such cash flow is not sufficient, the Company may be required to issue additional debt or equity securities, refinance its obligations, or take other actions in order to make such scheduled payments. The Company cannot be sure that it would be able to effect any such transactions on favorable terms, if at all and failure to do so may cause an event of default under the Credit Agreement, which will have a material adverse effect on the Company's business, operating results and financial conditions.

**Table of Contents****Operating Lease Commitments**

The Company reached the end of its lease term on its previous corporate headquarters located at 701 Gateway, in South San Francisco in February 2008. In anticipation of this event, on June 1, 2007, the Company entered into a five year sublease agreement with Oracle Corporation for approximately 83,000 square feet of office space in the Bridgepointe Campus in San Mateo, California. This lease is operating in nature, commenced on August 1, 2007 and ends on July 31, 2012. In addition, the lease provided for approximately nine months of free rent (rent holiday) and approximately \$600,000 in landlord incentives applied by Actuate towards construction of improvements. As a result, the Company straight-lined its rent expense and recorded a deferred rent liability on its consolidated balance sheet. At March 31, 2009, the deferred rent liability balance totaled approximately \$1.1 million and this balance is being amortized over the life of the lease through July 2012. The incentives were applied to leasehold improvements completed during the fourth quarter of fiscal year 2007. Actuate also leases an additional 50,400 square feet in one facility in South San Francisco, California. The lease on this additional facility will expire in April 2011 and this facility is entirely being subleased. Actuate also leases office facilities in various locations in the United States and abroad. All facilities are leased under operating leases.

As of March 31, 2009, Actuate pledged \$655,000 of restricted cash as collateral for standby letters of credit that guarantee its contractual obligations relating to certain sublease agreements including its corporate headquarter facilities located at the Bridgepointe Campus in San Mateo, California. This restricted cash is classified as Other Assets in the accompanying Consolidated Balance Sheet.

**Stock Option Plans**

In March 2007, the Board of Directors amended the automatic stock option grant program for non-employee directors. This amendment changed the number of shares covered by the initial and annual awards to non-employee directors, beginning with the grants to be made at the 2008 Annual Meeting. The amendment reduced the number of option shares which will automatically be granted to each individual who first joins the Board as a non-employee director from 80,000 to 40,000 option shares and increased the number of option shares which will be automatically granted to each continuing non-employee Board member at each annual stockholders meeting from 10,000 option shares to 25,000 option shares. All other terms of the program, including vesting schedules for the initial grant and the annual grant, remain unchanged.

As of March 31, 2009, 230,000 shares of common stock were reserved and available for future grants under the Directors Option Plan.

All directors are eligible to receive option awards under Actuate's Amended and Restated 1998 Equity Incentive Plan (the 1998 Plan). In January 2008, the Board of Directors resolved that starting with the grants awards to be made at the 2008 Annual Meeting all grants awards to the non-employee directors shall be made under the 1998 Plan rather than the Directors Plan. All other terms of the non-employee director program, including vesting schedules for the initial grant award and the automatic annual award remain unchanged.

All options are subject to the same vesting schedule (twenty-five percent of the option shares will vest on the one year anniversary of the option grant date and the remaining option shares will vest in thirty-six equal monthly installments over the thirty-six month period measured from the first anniversary of the option grant date, provided the optionee continues to provide services to the Corporation through each applicable vesting date) and all have ten year terms other than the February 2009 grants to Mr. Cittadini and Mr. Gaudreau which have a term of five (5) years.

Shares issued as a result of the exercise of options under any of our plans would be fulfilled through shares currently in our existing pools. Total authorized but unissued shares were 31,869,775 as of March 31, 2009.

The weighted average grant date fair value of options granted during the quarter ended March 31, 2009 was \$1.85 per option. Upon the exercise of options, the Company issues new common stock from its authorized shares. The total intrinsic value of options exercised during the quarter ended March 31, 2009 was \$649,000.

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number of Shares	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number of Shares	Weighted-Average Exercise Price
\$0.78-\$1.49	4,175,206	3.92 years	\$ 1.49	4,175,206	\$ 1.49
\$1.56-\$3.36	3,034,678	5.61 years	\$ 2.69	2,887,162	\$ 2.67

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\$3.40-\$3.75	4,484,532	6.78 years	\$	3.62	2,412,231	\$	3.66
\$3.77-\$5.11	3,838,790	6.35 years	\$	4.68	2,182,324	\$	4.74
\$5.18-\$31.19	2,995,946	7.54 years	\$	7.38	1,271,498	\$	8.95
\$0.78-\$31.19	18,529,152	5.98 years	\$	3.81	12,928,421	\$	3.44

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	March 31, 2009	March 31, 2008
<b>Options Outstanding – Vested and Expected to Vest</b>		
Vested and expected to vest, net of expected forfeitures	18,178,474	19,370,443
Aggregate intrinsic value (in thousands)	\$ 7,756	\$ 20,122
Weighted average exercise price per share	\$ 3.80	\$ 3.73
Weighted average remaining contractual term (in years)	5.93	6.12
<b>Options Exercisable</b>		
Options currently exercisable	12,928,421	13,916,348
Aggregate intrinsic value of currently exercisable options (in thousands)	\$ 7,726	\$ 18,959
Weighted average exercise price per share	\$ 3.44	\$ 3.15
Weighted average remaining contractual term (in years)	4.87	5.03

As of March 31, 2009, the number of shares reserved for future grants under all option plans was 13,340,623. The number of shares available for future purchase under the Purchase Plan was 1,515,258.

**8. Deferred Revenue**

Deferred revenue consists of the following (in thousands):

	March 31, 2009	December 31, 2008
Maintenance and support	\$ 37,531	\$ 38,070
Other	5,070	5,302
	42,601	43,372
Less: current portion	(40,479)	(40,900)
Long-term deferred revenue	\$ 2,122	\$ 2,472

Maintenance and support consists of first year maintenance and support services associated with the initial purchase of Actuate's software, and the renewal of annual maintenance and support services from customers who purchased Actuate's software in prior periods. The maintenance and support period is generally 12 months and revenues are typically recognized on a straight-line basis over the term of the maintenance and support period.

Other deferred revenue consists of deferred license, training and consulting fees generated from arrangements, which did not meet some or all of the revenue recognition criteria of SOP No. 97-2 and are, therefore, deferred until all revenue recognition criteria have been met.

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

*The following information should be read in conjunction with the historical financial information and the notes thereto included in Item 1 of this Quarterly Report on Form 10-Q, the consolidated financial statements and notes thereto and the related Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended December 31, 2008 as filed with the Securities and Exchange Commission on March 12, 2009.*

*The statements contained in this Form 10-Q that are not purely historical are forward looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, including statements regarding Actuate's expectations, beliefs, hopes, intentions, plans or strategies regarding the future. All forward-looking statements in this Form 10-Q are based upon information available to Actuate as of the date hereof, and Actuate assumes no obligation to update any such forward-looking statements. Actual results could differ materially from Actuate's current expectations. Factors that could cause or contribute to such differences include, but are not limited to, the risks discussed in Part II, Item 1A Risk Factors of this Form 10-Q, Part I, Item 1A Risk Factors in our Annual Report for the year ended December 31, 2008 and in other filings made by the Company with the Securities and Exchange Commission.*

### **Overview**

Actuate Corporation ( We , Actuate or the Company ) was incorporated in November 1993 in the State of California and reincorporated in the State of Delaware in July 1998. Actuate provides software and services to develop and deploy Rich Internet Applications ( RIAs ) Without Limits. These RIAs deliver rich interactive content that improve customer loyalty and corporate performance. Applications built on Actuate's open source-based platform provide all stakeholders inside and outside the firewall, including employees, customers, partners and citizens, with information that they can easily access and understand to maximize revenue, cut costs, improve customer satisfaction, streamline operations, create competitive advantage and make better decisions. Our goal is to ensure that all users can use decision-making information in their day-to-day activities, opening up completely new avenues for improving corporate performance. Actuate's telephone number is 650-645-3000. Actuate maintains a Web site at [www.actuate.com](http://www.actuate.com). The information posted on our Web site is not incorporated into this Annual Report.

We began shipping our first product in January 1996. We sell software products through two primary means: (i) directly to end-user customers through our direct sales force and (ii) through indirect channel partners such as OEMs, resellers and system integrators. OEMs generally integrate our products with their applications and either provide hosting services or resell them with their products. Our other indirect channel partners resell our software products to end-user customers. Our total revenues are derived from license fees for software products and fees for services relating to such products, including software maintenance and support, professional services and training.

The software industry is currently experiencing significant challenges, primarily due to a deteriorating macroeconomic environment, which is primarily characterized by diminished product demand. As a result of this downturn, some of our customers may face financial challenges in fiscal 2009. It is unclear when the macroeconomic environment may improve. We are seeing increasing pressures on our customers' Information Technology budgets, and therefore our customers are looking for more flexibility in the timing of such purchases.

Facing uncertainty and cost pressures in their own businesses, some of our customers are waiting to purchase our products and are increasingly seeking purchasing terms and conditions that are less favorable to us. This trend partially contributed to lower license revenues for fiscal 2008 and this trend may continue for the remainder of fiscal 2009. We have also seen a similar impact on our consulting business in the recent quarters.

Our customers may also experience adverse changes in their business and, as a result, may delay or default on their payment obligations, file for bankruptcy or modify or cancel plans to license our products. If our customers are not successful in generating sufficient revenue or are precluded from securing financing, they may not be able to pay, or may delay payment of, accounts receivable that are owed to us, although these obligations are generally not cancelable. Additionally, our customers may seek to renegotiate existing contractual commitments. Though we have not yet experienced any unusual levels of defaults, any material payment default by our customers or significant reductions in existing contractual commitments could have a material adverse effect on our financial condition and operating results.

Our total revenues for the first quarter of fiscal year 2009 were relatively flat at \$29.3 million compared to \$29.5 million reported in the first quarter of fiscal 2008. Despite the challenging macro economic environment, we managed to grow our license revenues by approximately 15% or \$1.1 million over the same period last year. This growth was mostly attributed to repeat business from some of our blue chip customers across a variety of verticals mainly in North America. We also experienced a 4% increase in our maintenance and support revenues as we continue to experience a steady growth in our installed base of customers under maintenance plans. These increases were more than offset by approximately 49% or a \$2.0 million decrease in professional services revenues. The decrease in professional services revenues was mainly due to a weak macro economic environment which is causing some customers to either delay their projects or cancel their engagements. We believe some customers are opting to use in-house resources to complete previously outsourced projects. Another factor contributing to the decrease in the professional services revenues is the increase in the adoption of BIRT-based projects by our customers which do not require professional service

to the same extent as the Company's traditional designer products.

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Despite some of the positive trends experienced in our license sales during the first quarter of fiscal 2009, we maintain our cautious stance for the remainder of fiscal 2009 as we continue to see a volatile macro economic environment and weak corporate spending on information technology.

During the second half of fiscal 2008 and in response to the weak macro economic conditions, we implemented a restructuring plan which resulted in the elimination of 46 positions held by Actuate employees primarily in North America, the consolidation of facilities, and the write-off of fixed assets located at facilities that had been vacated. These cost cutting measures have primarily been the force behind the 15% or \$4.5 million decrease in operating expenses in the first quarter of fiscal 2009 compared to the first quarter of fiscal 2008. Consequently, our operating margins have improved from a negative 3% or \$949,000 loss in the first quarter of fiscal 2008 to a positive 11% or \$3.3 million income in the first quarter of fiscal 2009. As a result of fluctuations in foreign currency exchange rates, our revenues were negatively impacted by approximately \$940,000 while our operating expenses were positively impacted by approximately \$930,000 for fiscal year 2009.

A significant portion of our revenues have historically been derived from customers in the financial services industry. The Company expects that it will continue to derive a significant portion of its revenues from these financial services customers for the foreseeable future. Unfavorable economic conditions have adversely impacted the financial services industry throughout fiscal 2008 and the first quarter of fiscal 2009. If this trend continues further into 2009, it will likely have a material adverse effect on the Company's business, financial condition and results of operations.

For the remainder of fiscal year 2009, we expect three additional trends to continue that would have a significant impact on the results of our operations. We currently believe that corporate IT budgets will grow only modestly if at all for the remainder of fiscal year 2009, particularly among financial services companies in the United States and Europe. Second, corporations are reluctant to buy software from new vendors and we continue to witness corporations consolidating their Business Intelligence, RIA and Performance Management software purchases into fewer suppliers. Finally, we expect to experience vigorous competition in the RIA market. Several of our competitors have released products that are marketed to be directly competitive with our RIA offerings. The existence of these competitive products may require additional sales and marketing efforts to differentiate our products, which could result in extended sales cycles. We believe that competition in the RIA market will be vigorous in the near future.

For remainder of fiscal year 2009, we will continue to pursue the strategic initiatives to improve revenue growth that we began introducing in fiscal year 2004 as well as an initiative related to Performance Management, which we introduced in fiscal 2007. These initiatives are as follows:

**Selling to IT Management** We are re-focusing our sales efforts on selling our products to IT managers who we believe generally recognize the technical advantages of our products. We hope this initiative will result in increased license revenue in the short term.

**Solution Selling to Line-of-Business Management** We are creating Performance Management applications and software solutions to market to line-of-business managers. These offerings are in the areas of performance management and customer self service reporting. We hope these initiatives will result in increased license revenue over the medium-to-long term.

**Investing in BIRT** We are continuing to make a significant investment in creating a new open source business intelligence and reporting tool, known as BIRT. We hope that BIRT will eventually become widely adopted by Java developers and will create demand for our other commercially available products. The BIRT project is a long-term initiative.

**Selling to Global 9000 Corporations in the Financial Services Sector** We are continuing to focus on selling our products to Global 9000 financial services companies in an effort to increase our substantive market share in this sector. We anticipate a negative impact of the ongoing credit crunch on the Financial Services sector in 2009. However, we believe that once the short term issues in Financial Services are resolved, the industry will once again lead in the adoption of RIA both inside and outside the firewall.

**Delivering a Highly Differentiated Performance Management Offering** We have integrated Actuate Performancesoft Performance Management applications, BIRT and Actuate's RIA-ready information platform to provide capabilities for distributing accountability throughout the enterprise.



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We have a limited ability to forecast future revenues and expenses, thus the prediction of future operating results is difficult. In addition, historical growth rates in our revenues and earnings should not be considered indicative of future revenue or earnings growth rates or operating results. There can be no assurance that any of our business strategies will be successful or that we will be able to achieve and maintain profitability on a quarterly or annual basis. It is possible that in some future quarter our operating results will be below the expectations of public market analysts and investors, and in such event the price of our common stock could decline.

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At March 31, 2009, we held \$16.5 million (par value) of investments comprised of ARS, which are variable-rate debt securities and have a long-term maturity with the interest rate being reset through Dutch auctions that are typically held every 28 days. Prior to February 2008, the securities had historically traded at par and are callable at par at the option of the issuer. Interest is typically paid at the end of each auction period or semiannually. At March 31, 2009, all of the ARS we held were AAA/Aaa rated, with most collateralized by student loans guaranteed by the U.S. government under the Federal Family Education Loan Program.

In November 2008, we elected to participate in a rights offering by UBS, our investment broker, which provides us with rights (the Put Option) to sell UBS \$16.5 million of our ARS portfolio at par value, at any time during a two-year sale period beginning June 30, 2010. By electing to participate in the rights offering, we granted UBS the right, exercisable at any time prior to June 30, 2010 or during the two-year sale period, to purchase or cause the sale of our ARS (the Call Right). UBS has stated that it will only exercise the Call Right for the purpose of restructurings, dispositions or other solutions that will provide their clients with par value for their ARS. UBS has agreed to pay their clients the par value of their ARS within one day of settlement of any Call Right transaction. Notwithstanding the Call Right, we are permitted to sell ARS to parties other than UBS, in which case the Put Option attached to the ARS that are sold would be extinguished. We classified the Put Option as a non-current security and valued the Put Option at the present value of the difference between the fair market value and the par value of the ARS.

We have no reason to believe that any of the underlying issuers of our ARS are presently at risk of default. Through March 31, 2009, we have continued to receive interest payments on the ARS in accordance with their terms. We believe we will ultimately be able to liquidate our ARS related investments without significant loss primarily due to the collateral securing ARS and the legal settlements we have entered into with UBS. However, it could take until final maturity of the ARS (up to 39 years) to realize our investments' par value. Due to the changes and uncertainty in the ARS market, we believe the recovery period for these investments is likely to be longer than 12 months and as a result, we have classified these investments as long-term as of March 31, 2009.

Since February 2008, most ARS auctions have failed for these securities and there is no assurance that future auctions will succeed and, as a result, our ability to liquidate our investment and fully recover the par value in the near term may be limited. In the event the Company needs to access these funds, it will not be able to do so without a loss of principal, unless a future auction on these investments is successful. In the first quarter of fiscal 2009, the Company increased the carrying value of these ARS investments through a \$718,000 increase to other income. This benefit was offset by a \$718,000 (or equal) decrease in the value of the Put Option related to our settlement agreement with UBS. The Company will evaluate these investments on a quarterly basis. For additional discussion please refer to the Note 4 of our Consolidated Financial Statements.

Actuate was incorporated in November 1993 in the State of California and reincorporated in the State of Delaware in July 1998. Actuate's principal executive offices are located at 2207 Bridgepointe Parkway, San Mateo, California. Actuate's telephone number is 650-645-3000. Actuate maintains a Web site at [www.actuate.com](http://www.actuate.com).

### **Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities at the date of our financial statements. Actual results may differ from these estimates under different assumptions or conditions.

For further information about our significant accounting policies, see the discussion under Item 7 to the annual consolidated financial statements as of and for the year ended December 31, 2008, as filed with the SEC on Form 10-K on March 12, 2009.

**Table of Contents****Results of Operations**

The following table sets forth certain consolidated statement of operations data as a percentage of total revenues for the periods indicated.

	<b>Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>Revenues:</b>		
License fees	30%	26%
Maintenance	63	60
Professional services and training	7	14
<b>Total revenues</b>	<b>100</b>	<b>100</b>
<b>Costs and expenses:</b>		
Cost of license fees	1	1
Cost of services	16	21
Sales and marketing	37	44
Research and development	17	19
General and administrative	17	16
Amortization of other purchased intangibles	1	1
Restructuring charges		1
<b>Total costs and expenses</b>	<b>89</b>	<b>103</b>
<b>Income (loss) from operations</b>	<b>11</b>	<b>(3)</b>
Interest and other income (loss), net	2	(1)
Interest expense	(1)	
<b>Income (loss) before income taxes</b>	<b>12</b>	<b>(4)</b>
Provision (benefit) for income taxes	2	(14)
<b>Net income</b>	<b>10%</b>	<b>10%</b>

**Revenues**

Our revenues are derived from license fees and services, which include software maintenance and support, professional consulting and training. Our total revenues decreased slightly from \$29.5 million for the quarter ended March 31, 2008 to \$29.3 million for the quarter ended March 31, 2009. We experienced increases in our license and maintenance revenues totaling approximately \$1.8 million. These increases were more than offset by a sharp decline of approximately \$2.0 million in our professional services revenues. Our professional services revenues continue to decline mostly due to the weak macro economic environment where we are seeing more of our customers cancelling professional services engagements and instead using in-house resources for completing previously outsourced services projects. Another factor contributing to the decrease in the professional services revenues is the increase in the adoption of BIRT-based projects by our customers which do not require professional service to the same extent as the Company's traditional designer products.

Sales outside of North America were \$6.6 million or 23% of total revenues for the first quarter of fiscal year 2009, compared to \$9.9 million, or 34% of total revenues for the first quarter of fiscal year 2008. The decrease in international revenues was primarily due to weakness in the global economy which has resulted in sharp decreases in both license and service revenues overseas.

Approximately \$940,000 of the decrease in international revenues was due to the unfavorable impact of exchange rate fluctuations on revenue transactions denominated in foreign currencies.

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	Three Months Ended (in thousands)		Variance \$ s	Variance %
	March 31, 2009	March 31, 2008		
<b>Revenues</b>				
License fees	\$ 8,753	\$ 7,610	\$ 1,143	15%
Maintenance	18,371	17,738	633	4%
Professional services and training	2,132	4,173	(2,041)	(49)%
<b>Total revenues</b>	<b>\$ 29,256</b>	<b>\$ 29,521</b>	<b>\$ (265)</b>	<b>(1)%</b>
<i>% of revenue</i>				
License fees	30%	26%		
Maintenance	63%	60%		
Professional services and training	7%	14%		
<b>Total revenues</b>	<b>100%</b>	<b>100%</b>		

*License fees.* License revenues increased in the first quarter of fiscal year 2009 compared to the same period last year as we experienced an increase in repeat business from some of our blue chip customers across a variety of verticals. This growth was primarily seen in North America, while our European and Asian regions showed significant decreases. During the first quarter of fiscal year 2009, we completed two license transactions greater than \$1.0 million and closed transactions greater than \$100,000 with 62 customers. During the same period last year we completed one license transaction greater than \$1.0 million and closed transactions greater than \$100,000 with 68 customers.

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The following table represents our license revenues by region (in thousands):

	Q1 2009	Q1 2008	\$ Change	% Change
North America	\$ 6,942	\$ 4,618	\$ 2,324	50%
Europe	1,689	1,958	(269)	(14)%
APAC	122	1,034	(912)	(88)%
<b>Total license revenue</b>	<b>\$ 8,753</b>	<b>\$ 7,610</b>	<b>\$ 1,143</b>	<b>15%</b>

Percentage of total revenue: 30% 26%

*Services.* Services revenue is comprised of maintenance and support, professional services, and training. The 6% decrease in services revenues was driven primarily by a 49% decrease in our professional services and consulting revenues. Our professional services revenues continue to decline mostly due to a weak macro economic environment which is causing some customers to either delay their projects or cancel their engagements. We believe some customers are opting to use in-house resources to complete previously outsourced projects. Another factor contributing to the decrease in the professional services revenues is the increase in the adoption of BIRT-based projects by our customers which do not require professional service to the same extent as the Company's traditional designer products. This decrease was offset by a 4% growth in our maintenance and support revenues evidenced by the fact that in fiscal year 2009 we are supporting a large percentage of the \$39.9 million in licenses sold in fiscal year 2008. Meanwhile, our maintenance declination rate has remained consistent as we continue to experience high renewal rates from our existing customers.

Services margins improved from 71% in the first quarter of fiscal year 2008, to 77% for the first quarter of fiscal year 2009. This improvement was mostly the result of cost reductions that were implemented in the second half of fiscal 2008.

The following table represents a breakdown of our service revenues by type of revenue (in thousands):

	Q1 2009	Q1 2008	\$ Change	% Change
Maintenance	\$ 18,371	\$ 17,738	\$ 633	4%
Professional services and training	2,132	4,173	(2,041)	(49)%
<b>Total services revenue</b>	<b>\$ 20,503</b>	<b>\$ 21,911</b>	<b>\$ (1,408)</b>	<b>(6)%</b>

Percentage of total revenue: 70% 74%

By region, North America accounted for approximately 77% of the total services revenue in the first quarter of fiscal 2009 while the Europe and Asia Pacific regions accounted for 20% and 3% of the total services revenues, respectively. For the same period last year, North America accounted for approximately 68% of the total services revenue while the Europe and Asia Pacific regions accounted for 29% and 3% of the total services revenues, respectively.

The following table represents our total services revenues by region (in thousands):

	Q1 2009	Q1 2008	\$ Change	% Change
North America	\$ 15,672	\$ 14,945	\$ 727	5%
Europe	4,168	6,322	(2,154)	(34)%
APAC	663	644	19	3%
<b>Total services revenue</b>	<b>\$ 20,503</b>	<b>\$ 21,911</b>	<b>\$ (1,408)</b>	<b>(6)%</b>

Percentage of total revenue: 70% 74%



**Table of Contents****Costs and Expenses***Cost of license fees*

	Three Months Ended (In thousands)			
	March 31,		Variance	Variance
	2009	2008	\$ s	%
Cost of license fees	\$ 200	\$ 326	\$ (126)	(39)%
% of license revenue	2%	4%		

Cost of license fees consists primarily of product packaging, documentation, production costs and the amortization of purchased technology. The decrease in cost of license fees in absolute dollars for the first quarter of fiscal year 2009, compared to the corresponding period in the prior year, was due primarily to the full amortization of purchased technologies in the third quarter of fiscal 2008 associated with our December 2005 purchase of third party source code. We expect our cost of license fees, as a percentage of revenues from license fees, to remain between 2% and 4% of revenues from license fees for the remainder of fiscal year 2009.

*Cost of services*

	Three Months Ended (In thousands)			
	March 31,		Variance	Variance
	2009	2008	\$ s	%
Cost of services	\$ 4,740	\$ 6,275	\$ (1,535)	(25)%
% of services revenue	23%	29%		

Cost of services consists primarily of personnel and related costs, share-based compensation, facilities costs incurred in providing software maintenance and support, training and consulting services, as well as third-party costs incurred in providing training and consulting services. The change in cost of services for the first quarter of fiscal year 2009, compared to the corresponding period in the prior year, was primarily due to decrease in consulting revenues as demand for Actuate's professional services engagements decreased substantially during the quarter. This decrease is mainly due to a weak macro economic environment which is causing some customers to either delay their projects or cancel their engagements. We believe some customers are opting to use in-house resources to complete previously outsourced projects. Another factor contributing to the decrease in the professional services revenues is the increase in the adoption of BIRT-based projects by our customers which do not require professional service to the same extent as the Company's traditional designer products. We also reduced our cost structure during the second half of fiscal 2008 due to deteriorating macro economic conditions and as a result reduced our professional consulting headcount by approximately 19% or 10 employees. As a result of these reductions, employee compensation and travel costs decreased by approximately \$450,000 during the first quarter of this year. Finally, during the first quarter of fiscal 2009 internally allocated sales support costs to the services cost center decreased by approximately \$550,000 primarily due to a 49% decrease in consulting revenues and a 19% decrease in sales related expenses. We currently expect our cost of services expenses as a percentage of total services revenues to be in the range of 23% to 30% of total services revenues for the remainder of fiscal year 2009.

*Sales and marketing*

	Three Months Ended (In thousands)			
	March 31,		Variance	Variance
	2009	2008	\$ s	%
Sales and marketing	\$ 10,710	\$ 13,138	\$ (2,428)	(19)%
% of revenue	37%	44%		

Sales and marketing expenses consist primarily of salaries, commissions, share-based compensation and bonuses earned by sales and marketing personnel, promotional expenses, travel, entertainment and facility costs. The decrease in sales and marketing expenses for the first quarter of fiscal year 2009 was primarily due to headcount reductions resulting from our announced restructuring plan which we implemented in the second half of fiscal 2008. Our headcount decreased by 17% or 32 employees resulting in lower compensation and associated costs of

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approximately \$1.7 million during the first quarter of fiscal 2009. We also experienced reductions of approximately \$670,000 in employee events and training related costs compared to the corresponding period last year due to the timing of our annual sales kick-off. This event was originally scheduled for January 2009 but instead was rescheduled for July 2009. However, aside from this timing difference of our annual sales kick-off, we did experience other cost reductions in almost



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every category within sales and marketing. These reductions in cost were offset by a reduction in sales support cost that were internally allocated to our services department. We currently expect our sales and marketing expenses as a percentage of total revenues to be in the range of 37% to 40% of total revenues for the remainder of fiscal year 2009.

*Research and development*

	Three Months Ended (In thousands)			
	March 31,		Variance \$ s	Variance %
	2009	2008		
Research and development	\$ 5,050	\$ 5,631	\$ (581)	(10)%
% of revenue	17%	19%		

Research and development costs consist primarily of personnel and related costs associated with the development of new products, share-based compensation costs, enhancement of existing products, quality assurance and testing. The decrease in research and development expenses in the first quarter of fiscal year 2009 was primarily attributed to employee compensation and related costs. During fiscal 2008, we shifted headcount away from North America where employee costs are higher and into China, where employee costs are significantly lower. Headcount increased by 7 employees in China and decreased by 7 employees in North America from March 31, 2008 to March 31, 2009. We believe that continued investments in technology and product development are essential for us to remain competitive in the markets we serve, and expect our research and development expenses as a percentage of total revenues to be in the range of 16% to 19% of total revenues for the remainder of fiscal year 2009.

*General and administrative*

	Three Months Ended (In thousands)			
	March 31,		Variance \$ s	Variance %
	2009	2008		
General and administrative	\$ 5,075	\$ 4,721	\$ 354	8%
% of revenue	17%	16%		

General and administrative expenses consist primarily of personnel costs, share-based compensation costs and related costs for finance, human resources, information systems and general management, as well as legal, bad debt and accounting expenses. The increase in general and administrative expenses in both absolute dollars and as a percentage of total revenues for the first quarter of fiscal year 2009 was primarily due to increased audit and tax advisory fees of approximately \$380,000 and an increase in legal fees of approximately \$270,000. The increase in audit fees were primarily due to the timing of the field work performed by our independent auditors resulting in higher number of hours charged during first quarter of fiscal 2009 compared to the same period last year while the increase in the legal fees were due mostly to contract compliance matters during the quarter. These increases were partially offset by a business tax refund of approximately \$180,000 in China and reductions in employee costs mostly due to reduced headcount. We expect our general and administrative expenses to be in the range of 12% to 14% of total revenues for the remainder of fiscal year 2009.

*Restructuring charges*

	Three Months Ended (In thousands)			
	March 31,		Variance \$ s	Variance %
	2009	2008		
Restructuring	\$ 41	\$ 142	\$ (101)	(71)%
% of revenue		%	1%	

During the first quarter of fiscal year 2009, we incurred \$41,000 in legal fees related to a previous restructuring which involved the terminations of former employees in one of our European subsidiaries. These charges were accounted for in accordance with Financial Accounting Standards ( SFAS ) No. 146, Accounting for Costs Associated with Exit or Disposal Activities , which requires the recognition of costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan.



**Table of Contents***Interest and other income, net*

	Three Months Ended (in thousands)			
	March 31,		Variance	Variance
	2009	2008	\$ s	%
Interest and other income	\$ 272	\$ 796	\$ (524)	(66)%
Foreign exchange gain/(loss)	200	(1,171)	1,371	117%
<b>Total interest and other income (loss), net</b>	<b>\$ 472</b>	<b>\$ (375)</b>	<b>\$ 847</b>	<b>226%</b>
Interest expense	(355)	(3)	(352)	N/A

Interest income during the first quarter of fiscal 2009 decreased substantially due to an overall decrease in interest rates and substantially lower cash balances. The rate of return on our investment portfolio dropped from 4.6% at end of the first quarter of 2008 to approximately 2.8% at the end of the first quarter of 2009. In addition to this decrease, we held lower cash and investment positions at the end of the first quarter of 2009 compared to the same period last year primarily due to the completion of our tender offer in the fourth quarter of fiscal 2008 which was funded by \$30.0 million in cash and an additional \$30.0 million drawn under the Company's credit facility.

The currency exchange gains were primarily the result of the revaluation of the British Pound, the Euro and the U.S. Dollar currency balances held by our Swiss subsidiary against the Swiss Franc. The currency exchange gain of approximately \$200,000 reported in the first quarter of fiscal 2009 compared to approximately \$1.1 million of exchange losses reported during the same period last year was the result of a more balanced currency market as we experienced continued devaluations in the British Pound and the Euro currencies that were offset by appreciation in the U.S. Dollar currency balances held by our Swiss subsidiary against the Swiss Franc. The revaluation of these currency amounts held in Switzerland to Swiss Francs is a required procedure in consolidating and reporting the financial results of our EMEA operations.

We recorded interest expense totaling approximately \$286,000 on the utilized portion of our credit facility with Wells Fargo Financial ( WFF ) which was signed in the fourth quarter of fiscal 2008. We also recorded unused line fees and capitalized debt issuance costs of approximately \$69,000 that are being amortized over the term of the credit facility.

*Provision for income taxes*

	Three Months Ended (In thousands)			
	March 31,		Variance	Variance
	2009	2008	\$ s	%
Provision (benefit) for income taxes	\$ 584	\$ (4,234)	\$ 4,818	114%
% of Revenue	2%	(14)%		

For the three months ended March 31, 2009, we recorded an income tax provision of approximately \$584,000, as compared to an income tax benefit of \$4.2 million for the same period of fiscal year 2008. The increase in the income tax provision for the first quarter of fiscal year 2009 as compared to the first quarter of fiscal year 2008 is mainly due to a tax benefit of \$3.7 million which was recognized in relation to the deemed liquidation for U.S. income tax purposes of one of our European subsidiaries for the same period in 2008 and the increased projected U. S. income for 2009.

During the three months ended March 31, 2009, the Company decreased its total amount of unrecognized tax benefits due to an over accrual balance at the end of fiscal 2008 as calculated under FASB Interpretation No. 48 ( FIN No. 48 ), Accounting for Uncertainty in Income Taxes an interpretation of FASB Statement No. 109 . This decrease was approximately \$66,000, and includes an accrual of interest and penalties for the first quarter of fiscal 2009 of approximately \$17,000. The Company recognizes interest and penalties accrued related to unrecognized tax benefits in income tax expense. The Company does not believe it is reasonably possible that its unrecognized tax benefits would materially change in the next 12 months.

**Liquidity and Capital Resources**

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	As of March 31, 2009	As of March 31, 2008	Change \$	Change %
Cash, cash equivalents and short-term investments	\$ 46,773	\$ 57,005	\$ (10,232)	(18)%
Working capital	\$ 24,336	\$ 36,843	\$ (12,507)	(34)%
Note payable	\$ 30,000	\$	\$ 30,000	N/A
Stockholders' equity	\$ 60,125	\$ 100,245	\$ (40,120)	(40)%

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The software industry is currently experiencing significant challenges, primarily due to a deteriorating macroeconomic environment, which is characterized by diminished product demand. As a result of this downturn, some of our customers may face financial challenges in fiscal 2009. It is unclear when the macroeconomic environment may improve. We are seeing increasing pressures on our customers' Information Technology budgets, and therefore our customers are looking for more flexibility in the timing of such purchases. The current economic downturn in our customers' industries has contributed to lower revenues and could continue to adversely impact our future business, operating results and financial condition.

Facing uncertainty and cost pressures in their own businesses, some of our customers are waiting to purchase our products and are increasingly seeking purchasing terms and conditions that are less favorable to us. Our customers may also experience adverse changes in their business and, as a result, may delay or default on their payment obligations, file for bankruptcy or modify or cancel plans to license our products. If our customers are not successful in generating sufficient revenue or are precluded from securing financing, they may not be able to pay, or may delay payment of, accounts receivable that are owed to us, although these obligations are generally not cancelable. Additionally, our customers may seek to renegotiate existing contractual commitments. Though we have not yet experienced any unusual levels of defaults, any material payment default by our customers or significant reductions in existing contractual commitments could have a material adverse effect on our financial condition and operating results.

Our primary source of cash is receipts from revenue. The primary uses of cash are payroll (salaries, sales commissions bonuses, and benefits), general operating expenses (marketing, travel, office rent) and debt service payments. Another source of cash is proceeds from the exercise of employee options and another use of cash is our stock repurchase program, which is discussed below.

***Cash flows from operating activities:*** Our largest source of operating cash flows is cash collections from our customers following the purchase and renewal of their software license updates and product support agreements. Payments from customers for software license updates and product support agreements are generally received near the beginning of the contracts' terms, which are generally one year in length. We also generate significant cash from new software license sales and, to a lesser extent, consulting. Our primary uses of cash from operating activities are for personnel related expenditures as well as payments related to taxes and leased facilities. Net cash provided by operating activities decreased in the first three months of fiscal 2009 compared to the same period last year primarily due to collection of a large one-time transaction with a customer who was out of compliance with its fiscal 2007 maintenance agreement and accordingly paid back maintenance in the first quarter of fiscal 2008. Days sales outstanding ( DSO ) which is calculated based on revenue for the most recent quarter and accounts receivable as of the balance sheet date increased by 8 days from 67 days at March 31, 2008 to 75 days at March 31, 2009.

***Cash flows from investing activities:*** The changes in cash flows from investing activities primarily relate to acquisitions and the timing of purchases, maturities and sales of our investments in marketable securities. We also use cash to invest in capital and other assets to support our growth. Net cash provided by investing activities decreased in the first quarter of fiscal 2009 compared to the same period last year due to the fact that we liquidated approximately \$30.0 of our cash and investments in the fourth quarter of fiscal 2008 to fund our tender offer.

***Cash flows from financing activities:*** The changes in cash flows from financing activities primarily relate to stock repurchases and proceeds from stock option exercise activity. Net cash used for financing activities in the first quarter of fiscal 2009 decreased compared to the first quarter of fiscal 2008 due to the fact that there were no stock repurchases during the quarter. This decrease was partially offset by proceeds from stock option exercise activity.

Despite a challenging economic environment, we remain focused on increasing our cashflows from operations and improving our operating margins and profitability. The current economic uncertainties have reduced our visibility in forecasting our future license revenues, from which we largely depend on achieving these goals. As visibility associated with these future license revenues remain limited, we may, from time to time, rely on cost cutting and swift resizing measures to achieve our objective of growth in operating cashflows, operating margins and profitability.

Our capital expenditures for the past two years have primarily consisted of leasehold improvements related to our headquarter facility in San Mateo, California and software costs associated with our internal customer portal project. We currently do not foresee material cash outlays associated with capital projects during the remainder of fiscal year 2009 and expect to see lowered cash payments associated with these activities.

In early November of 2008, we entered into a revolving Credit Agreement with Wells Fargo Foothill and secured a revolving line of credit in the principal amount of up to \$50.0 million. During the fourth quarter of fiscal year 2008, we used \$30.0 million of our cash along with \$30.0 million of funds available through this credit facility to complete a \$60.0 million common stock buy back. As of March 31, 2009, we owed \$30.0 million on the credit facility. Total costs associated with the facility including legal and closing fees amounted to approximately \$1.2 million. Of these total costs, approximately \$825,000 was paid as of March 31, 2009. The remaining balance is comprised of closing fees of which \$250,000 are due and payable on the first anniversary of the credit facility in November of fiscal year 2009 and \$125,000 is due and

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payable on the third anniversary in November of fiscal year 2011. We are also obligated to make monthly interest payments and expect to pay approximately \$1.1 million in interest on the outstanding \$30.0 million loan balance annually. We expect that these payments will be made through fiscal year 2012 and total approximately \$4.5 million.

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These payments may fluctuate depending on the outstanding principal balance and changes in interest rates. We currently have full access to the remaining \$20.0 million of unused balance on the credit line and may use this amount to fund future operations or potential acquisitions. Because of our indebtedness, a significant portion of our cash flow from operations is and will be required for debt service. Our levels of debt could have negative consequences for us. It should be noted that:

a substantial portion of our cash flow is, and will be, dedicated to debt service and is not, and will not be, available for other purposes;

our ability to obtain additional financing for working capital, capital expenditures, acquisitions and general corporate or other purposes may be impaired in the future;

our borrowings are, and will be, at variable rates of interest, which may expose us to the risk of increases in interest rates; and

our level of indebtedness could make us more vulnerable to economic downturns, limit our ability to withstand competitive pressures and reduce our flexibility in responding to changing business and economic conditions.

We believe that cash flows from operations will be sufficient to meet our current debt service requirements for interest and any required prepayments under the Credit Agreement. However, if such cash flow is not sufficient, we may be required to issue additional debt or equity securities, refinance our obligations, or take other actions in order to make such scheduled payments. We cannot be sure that we would be able to effect any such transactions on favorable terms, if at all and failure to do so may cause an event of default under the Credit Agreement, which will have a material adverse effect on our business, operating results and financial conditions.

Similarly, the Credit Agreement includes limitations on the Company's ability to incur debt, grant liens, make acquisitions, make certain restricted payments such as dividend payments, and dispose of assets. The events of default under the Credit Agreement include payment defaults, cross defaults with certain other indebtedness, breaches of covenants and bankruptcy events. In the case of a continuing event of default, the lenders under the Credit Agreement may, among other remedies, eliminate their commitments to make credit available, declare due all unpaid principal amounts outstanding, and require cash collateral for any letter of credit obligations and foreclose on all collateral which will have a material adverse effect on our business, operating results and financial conditions.

In November 2008, we elected to participate in a rights offering by UBS, our investment broker, which provides us with the right (the Put Option) to sell UBS \$16.5 million of our ARS portfolio at par value, at any time during a two-year sale period beginning June 30, 2010. We classified this portion of our ARS portfolio as a non-current security. This treatment has resulted in a significant decrease to our cash, cash equivalents and short-term investments balance as well as our working capital. Despite these decreases, we believe that participation in this offering allows us further liquidity and access to available cash which enhances our operating position especially during the current period of economic uncertainty. We continue to earn and receive interest on our ARS investments at the maximum contractual rate, which may not exceed the one year trailing average rate on the three month Treasury Bill plus 120 basis points.

We hold our cash, cash equivalents and investments primarily in the United States, Switzerland, and Singapore. As of March 31, 2009, we held an aggregate of approximately \$45.1 million in cash, cash equivalents and investments in the United States and an aggregate of \$18.1 million in foreign accounts. Funds in foreign accounts are primarily generated from revenue outside North America and are used to fund overseas operations.

We expect cash provided by operating activities to fluctuate in future periods as a result of a number of factors, including timing of our billings and collections, our operating results, the timing and amount of tax and other liability payments and cash used in any future acquisitions.

***Contractual Obligations and Commercial Commitments***

Our license agreements include indemnification for infringement of third party intellectual property rights and certain warranties. No amounts have been accrued relating to those indemnities and warranties.

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In November 2008, the Company entered into a four year revolving line of credit agreement ( Credit Agreement ) with Wells Fargo Foothill, LLC ( Wells Fargo ). The Credit Agreement was effective as of November 3, 2008 and allows for cash borrowings and letters of credit under a secured revolving credit facility of up to a maximum of \$50.0 million, but not to exceed 80% of the Company s trailing four quarters of recurring maintenance revenue. Interest is based on a floating rate plus an applicable margin based on the outstanding balance of the amount drawn under the Credit Agreement. The floating rate is determined at the Company s election and may either be (i) London Interbank Offered Rate ( LIBOR ) or (ii) the greater of the Federal Funds Rate plus an applicable margin and the Prime Rate. If the Company s usage of the credit line exceeds 80% of its trailing four quarters of recurring maintenance revenue, or if the sum of available funds under the Credit Agreement plus available cash is less than \$10.0 million, the Company is required to meet certain minimum income targets and be subject to a limit on annual capital expenditures. The Company



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is required to make interest payments and pay an unused commitment fee on a monthly basis. The Credit Agreement also requires that the Company pay a commitment fee based on a percentage of unused portion of the overall available facility. These costs along with related legal costs are classified as current assets in the Company's Consolidated Balance Sheet at March 31, 2009 if payable within one year or non-current assets if payable beyond one year.

The Company reached the end of its lease term on its previous corporate headquarters located at 701 Gateway, in South San Francisco in February 2008. In anticipation of this event, on June 1, 2007, the Company entered into a five year sublease agreement with Oracle Corporation for approximately 83,000 square feet of office space in the Bridgepointe Campus in San Mateo, California. This lease is operating in nature, commenced on August 1, 2007 and ends on July 31, 2012. In addition, the lease provided for approximately nine months of free rent (rent holiday) and approximately \$600,000 in landlord incentives applied by Actuate towards construction of improvements. The incentives were applied to leasehold improvements completed during the fourth quarter of fiscal year 2007.

As of March 31, 2009, Actuate pledged \$655,000 of restricted cash, as collateral for a standby letter of credit that guarantees its contractual obligations relating to its sublease agreement for its corporate facilities including its headquarter located at the Bridgepointe Campus in San Mateo, California. This restricted cash is classified as Other Assets in the accompanying Consolidated Balance Sheet.

The following table summarizes our contractual obligations as of March 31, 2009 (in thousands):

	<b>Total</b>	<b>Less than 1 year</b>	<b>1 3 years</b>	<b>3 5 years</b>	<b>Thereafter</b>
<b>Obligations:</b>					
Operating leases (1)	\$ 17,393	\$ 6,312	\$ 8,859	\$ 1,848	\$ 374
Purchase obligations (2)	5,129	5,039	75	10	5
Interest and loan obligations (3)	4,504	1,377	2,353	774	
Obligations under FIN 48 (4)	1,594		1,594		
<b>Total</b>	<b>\$ 28,620</b>	<b>\$ 12,728</b>	<b>\$ 12,881</b>	<b>\$ 2,632</b>	<b>\$ 379</b>
	<b>Total</b>	<b>Less than 1 year</b>	<b>1 3 years</b>	<b>3 5 years</b>	<b>Thereafter</b>
Contractual sublease proceeds	\$ 3,493	\$ 1,530	\$ 1,963	\$	\$

- (1) Our future contractual obligations include minimum lease payments under operating leases at March 31, 2009. Of the remaining future minimum lease payments, approximately \$7.0 million is included in restructuring liabilities on the Company's Consolidated Balance Sheet as of March 31, 2009.
- (2) Purchase obligations represent an estimate of all open purchase orders and contractual obligations in the ordinary course of business for which we have not received the goods or services as of March 31, 2009. Although open purchase orders are considered enforceable and legally binding, the 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.
- (3) Estimated interest and commitment fees related to the revolving line of Credit Agreement with Wells Fargo Foothill.
- (4) Represents the tax liability associated with the calculation of uncertain tax positions. See FIN 48 discussion in Note 11 of our Notes to Consolidated Financial Statements of our Form 10-K for fiscal year 2008 filed with the SEC on March 12, 2009.



**Table of Contents****ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

*Market Risk.* Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of credit risk, fluctuations in interest rates and foreign exchange rates.

*Foreign Currency Exchange Risk.* During the first three months of fiscal years 2009 and 2008 we derived 23% and 34%, respectively, of our total revenues from sales outside of North America. We face exposure to market risk on these receivables with respect to fluctuations in the relative value of currencies. Our international revenues and expenses are denominated in foreign currencies, principally the Euro and the British Pound Sterling. The functional currency of each of our foreign subsidiaries is the local currency. We are also exposed to foreign exchange rate fluctuations as the financial results of foreign subsidiaries are translated into U.S. dollars in consolidation. As exchange rates vary, transaction gains and losses may vary from expectations and adversely impact overall expected profitability. Our realized gain due to foreign exchange rate fluctuations was approximately \$200,000 for the first three months of fiscal 2009 compared to losses of approximately \$1.2 million during the same period last year. During the first quarter of fiscal 2009, exchange rate fluctuations on foreign revenue transactions negatively impacted our total revenue growth by approximately \$940,000 when compared to the same period in the prior year while expenses were positively impacted by approximately \$930,000.

*Interest Rate Risk.* The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest in highly liquid and high quality debt securities. Due to the nature of our investments, we believe that there is limited risk exposure.

We also have a \$30.0 million loan with Wells Fargo Foothill which we used to partially fund our tender offer in 2008. We performed a sensitivity analysis on the outstanding portion of this loan as of March 31, 2009. The analysis is based on an estimate of the hypothetical changes in annual interest expense that would result from an immediate increase/decrease in interest rates.

The analysis is shown as of March 31, 2009:

Annual change in interest expense (in thousands)					
-1.5%	-1.0%	-0.5%	+0.5%	+1.0%	+1.5%
(450)	(300)	(150)	150	300	450

*Credit Risk.* Financial instruments that potentially subject us to concentrations of credit risk consist primarily of cash and cash equivalents, investments in marketable securities, and trade accounts receivable. We have policies that limit investments in investment grade securities and the amount of credit exposure to any one issuer. We perform ongoing credit evaluations of our customers and maintain an allowance for potential credit losses. We do not require collateral or other security to support customer receivables. Our credit risk is also mitigated because our customer base is diversified by geography and no single customer has accounted for more than 10% of our consolidated revenue on an annual basis. We generally do not use foreign exchange contracts to hedge the risk in receivables denominated in foreign currencies. We do not hold or issue derivative financial instruments for trading or speculative purposes.

Our investments portfolio includes ARS. Prior to February 2008, these securities historically traded at par and are callable at par at the option of the issuer. At the end of fiscal 2008, all of the long-term ARS we held were AAA/Aaa rated with most collateralized by student loans guaranteed by the U.S. Government under the Federal Family Education Loan Program. Until fiscal 2008, the auction rate securities market was highly liquid. During Fiscal year 2008, a substantial number of auctions failed, meaning that there was not enough demand to sell the entire issue of the securities that holders desired to sell at auction. The immediate effect of a failed auction is that certain holders cannot sell the securities at auction and the interest or dividend rate on the security generally resets to a maximum auction rate. In the case of a failed auction, with respect to the ARS held by us, the ARS is deemed not currently liquid. In the case of funds invested by us in ARS which are the subject of a failed auction, we may not be able to access the funds prior to maturity without a loss of principal, unless a future auction on these investments is successful or the issuer calls the security pursuant to a mandatory tender or redemption.

In November 2008, we elected to participate in a rights offering by UBS, our investment broker, which provides us with rights (the Put Option) to sell UBS \$16.5 million of our ARS portfolio at par value, at any time during a two-year sale period beginning June 30, 2010. UBS has agreed to pay their clients the par value of their ARS within one day of settlement of any Call Right transaction. Notwithstanding the Call Right, we are permitted to sell ARS to parties other than UBS, in which case the Put Option attached to the ARS that are sold would be extinguished. We classified the Put Option as a non-current security.

Additional information regarding our investment portfolio is detailed in Note 4 to the Consolidated Financial Statements for the quarter ended March 31, 2009.

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We do not believe that future market equity or interest rate risks related to our marketable investments or debt obligations will have a material impact on our results of operations.

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**ITEM 4. CONTROLS AND PROCEDURES**

As of the end of the period covered by this report (the Evaluation Date ), the Company carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act )). There are inherent limitations to the effectiveness of any system of disclosure controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable, not absolute, assurance of achieving their control. Subject to these limitations, and based on the evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the Evaluation Date, the disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the reports Actuate files and submits under the Exchange Act are recorded, processed, summarized and reported as and when required.

*Changes in Internal Controls*

There were no changes in Actuate's internal control over financial reporting during the three months ended March 31, 2009 that have materially affected, or are reasonably likely to materially affect, Actuate's internal control over financial reporting.

***Part II. Other Information***

**Item 1. Legal Proceedings**

The Company is engaged in certain legal actions arising in the ordinary course of business, including international employment litigation arising out of restructuring activities. Although there can be no assurance as to the outcome of such litigation, the Company believes that it has adequate legal defenses and that the ultimate outcome of any of these actions will not have a material effect on the Company's financial position or results of operations.

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### **Item 1A. Risk Factors**

*Investors should carefully consider the following risk factors and warnings before making an investment decision. The risks described below are not the only ones facing Actuate. Additional risks that we do not yet know of or that we currently think are immaterial may also impair our business operations. If any of the following risks actually occur, our business, operating results or financial condition could be materially harmed. In such case, the trading price of our common stock could decline and you may lose all or part of your investment. Investors should also refer to the other information set forth in this Report on Form 10-K, including the financial statements and the notes thereto.*

**THE COMPANY'S OPERATING RESULTS MAY BE VOLATILE AND DIFFICULT TO PREDICT. IF IT FAILS TO MEET ITS ESTIMATES OF FUTURE OPERATING RESULTS OR IT FAILS TO MEET THE EXPECTATIONS OF PUBLIC MARKET ANALYSTS AND INVESTORS, THE MARKET PRICE OF ITS STOCK MAY DECREASE SIGNIFICANTLY.**

The susceptibility of the Company's operating results to significant fluctuations makes any prediction, including the Company's estimates of future operating results, difficult. In addition, the Company believes that period-to-period comparisons of its operating results are not necessarily meaningful and investors should not rely on them as indications of the Company's future performance. The Company's operating results have in the past varied, and may in the future vary significantly due to factors such as the following:

Demand for its products;

The size and timing of significant orders for its products;

A slowdown or a decrease in spending on information technology by its current and/or prospective customers;

Competition from products that are directly competitive with its products;

Lost revenue from introduction or market acceptance of open source products that are directly competitive with its products;

The management, performance and expansion of its international operations;

Foreign currency exchange rate fluctuations;

Customers' desire to consolidate their purchases of RIA, Performance Management and Business Intelligence software to one or a very small number of vendors from which a customer has already purchased software;

General domestic and international economic and political conditions, including war, terrorism, and the threat of war or terrorism;

Sales cycles and sales performance of its indirect channel partners;

Changes in the way it and its competitors price their respective products and services, including maintenance and transfer fees;

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Continued successful relationships and the establishment of new relationships with OEMs;

Changes in its level of operating expenses and its ability to control costs;

The outcome or publicity surrounding any pending or threatened lawsuits;

Ability to make new products and product enhancements commercially available in a timely manner;

Ability to effectively launch new or enhanced products, including the timely education of the Company's sales, marketing and consulting personnel with respect to such new or enhanced products.;

Customers delaying purchasing decisions in anticipation of new products or product enhancements;

Budgeting cycles of its customers;

Failure to successfully manage its acquisitions;

Defects in its products and other product quality problems;

Failure to successfully meet hiring needs including for qualified professional services employees and unexpected personnel changes;

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Changes in the market segments and types of customers at which it focuses its sales and marketing efforts;

Changes in perpetual licensing models to term- or subscription-based models with respect to which license revenue is not fully recognizable at the time of initial sale;

Changes in service models with respect to which consulting services are performed on a fixed-fee, rather than variable fee, basis; and

Potential impairments of Auction Rate Securities ( ARS ), goodwill, intangibles and other investments.

Because the Company's software products are typically shipped shortly after orders are received, total revenues in any quarter are substantially dependent on orders booked and shipped throughout that quarter. Furthermore, several factors may require the Company, in accordance with accounting principles generally accepted in the United States, to defer recognition of license fee revenue for a significant period of time after entering into a license agreement, including:

Whether the license agreement includes both software products that are then currently available and software products or other enhancements that are still under development;

Whether the license agreement relates entirely or partly to software products that are currently not available;

Whether the license agreement requires the performance of services that may preclude revenue recognition until successful completion of such services;

Whether the license agreement includes acceptance criteria that may preclude revenue recognition prior to customer acceptance;

Whether the license agreement includes undelivered elements (including limited terms or durations) that may preclude revenue recognition prior to customer acceptance; and

Whether the license agreement includes extended payment terms that may delay revenue recognition until the payment becomes due. In addition, the Company may in the future experience fluctuations in its gross and operating margins due to changes in the mix of its domestic and international revenues, changes in the mix of its direct sales and indirect sales and changes in the mix of license revenues and service revenues, as well as changes in the mix among the indirect channels through which its products are offered.

A significant portion of the Company's total revenues in any given quarter is derived from existing customers. The Company's ability to achieve future revenue growth, if any, will be substantially dependent upon its ability to increase revenues from license fees and services from existing customers, to expand its customer base and to increase the average size of its orders. To the extent that such increases do not occur in a timely manner, the Company's business, operating results and financial condition would be harmed.

The Company's expense levels and any plans for expansion are based in significant part on its expectations of future revenues and are relatively fixed in the short-term. If revenues fall below expectations and the Company is unable to respond quickly by reducing its spending, the Company's business, operating results, and financial condition could be harmed.

The Company often implements changes to its license pricing structure for all of its products including increased prices and modified licensing parameters. If these changes are not accepted by the Company's current customers or future customers, its business, operating results, and financial condition could be harmed.



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Based upon all of the factors described above, the Company has a limited ability to forecast the amount and mix of future revenues and expenses and it is likely that at some time, the Company's operating results will fall below its estimates or the expectations of public market analysts and investors. In the event that operating results are below its estimates or other expectations, the price of the Company's common stock is likely to decline.

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**THE COMPANY HAS MADE, AND MAY IN THE FUTURE MAKE, ACQUISITIONS, WHICH INVOLVE NUMEROUS RISKS.**

The Company's business is highly competitive, and as such, its growth is dependent upon market growth and its ability to enhance its existing products, introduce new products on a timely basis and expand its distribution channels and professional services organization. One of the ways the Company has addressed and will continue to address these issues is through acquisitions of other companies.

Generally, acquisitions involve numerous risks, including the following:

The benefits of the acquisition not materializing as planned or not materializing within the time periods or to the extent anticipated;

The Company's ability to manage acquired entities' people and processes that are headquartered in separate geographical locations from the Company's headquarters;

The possibility that the Company will pay more than the value it derives from the acquisition;

Difficulties in integration of the operations, technologies, and products of the acquired companies;

The assumption of certain known and unknown liabilities of the acquired companies;

Difficulties in retaining key relationships with customers, partners and suppliers of the acquired company;

The risk of diverting management's attention from normal daily operations of the business;

The Company's ability to issue new releases of the acquired company's products on existing or other platforms;

Negative impact to the Company's financial condition and results of operations and the potential write down of impaired goodwill and intangible assets resulting from combining the acquired company's financial condition and results of operations with its financial statements;

Risks of entering markets in which the Company has no or limited direct prior experience; and

The potential loss of key employees of the acquired company.

Mergers and acquisitions of high-technology companies are inherently risky, and the Company cannot be certain that any acquisition will be successful and will not materially harm the Company's business, operating results or financial condition.

**INTELLECTUAL PROPERTY CLAIMS AGAINST THE COMPANY CAN BE COSTLY AND COULD RESULT IN THE LOSS OF SIGNIFICANT RIGHTS.**

Third parties may claim that the Company's current or future products infringe their intellectual property rights. The Company has been subject to infringement claims in the past and it expects that companies in the Business Intelligence, RIA or Performance Management software market

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will increasingly be subject to infringement claims as the number of products and/or competitors in its industry segment grows and the functionality of products in different industry segments overlaps. Any such claims, with or without merit, could be time-consuming to defend, result in significant litigation and other expenses, divert management's attention and resources, cause product shipment delays or require the Company to enter into royalty or licensing agreements. Such royalty or licensing agreements, if required, may not be available on terms acceptable to the Company or at all. A successful claim of product infringement against the Company and its failure or inability to license the infringed or similar technology could materially harm the Company's business, operating results and financial condition.

### **THE COMPANY MAY NOT BE ABLE TO PROTECT ITS SOURCE CODE FROM COPYING.**

Source code, the detailed program commands for our operating systems and other software programs, is critical to our business. Although we take significant measures to protect the secrecy of large portions of our source code, unauthorized disclosure or reverse engineering of a significant portion of our source code could make it easier for third parties to compete with our products by copying functionality, which could adversely affect our revenue and operating margins.

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**IF THE COMPANY FAILS TO GROW REVENUE FROM INTERNATIONAL OPERATIONS AND EXPAND ITS INTERNATIONAL OPERATIONS ITS BUSINESS WOULD BE SERIOUSLY HARMED.**

The Company's total revenues derived from sales outside North America were 23%, 34% and 26% for the first quarter of fiscal years 2009, 2008 and 2007, respectively. Its ability to achieve revenue growth in the future will depend in large part on its success in increasing revenues from international sales. The Company intends to continue to invest significant resources to expand its sales and support operations outside North America and to potentially enter additional international markets. In order to expand international sales, the Company must establish additional foreign operations, expand its international channel management and support organizations, hire additional personnel, recruit additional international resellers and increase the productivity of existing international resellers. The Company intends to continue to shift its focus from direct sales to indirect sales in certain of its international markets in 2009. If it is not successful in expanding international operations in a timely and cost-effective manner, the Company's business, operating results and financial condition could be materially harmed.

**IF THE COMPANY DOES NOT SUCCESSFULLY EXPAND ITS DISTRIBUTION CHANNELS AND DEVELOP AND MAINTAIN RELATIONSHIPS WITH OEMs, ITS BUSINESS WOULD BE SERIOUSLY HARMED.**

To date, the Company has sold its products principally through its direct sales force, as well as through indirect sales channels, such as its OEMs, resellers and systems integrators. The Company's revenues from license fees resulting from sales through indirect channel partners were approximately 33%, 35%, and 32% of total revenues from license fees for the first quarter of fiscal years 2009, 2008 and 2007, respectively. The Company's ability to achieve significant revenue growth in the future will depend in large part on the success of its sales force in further establishing and maintaining relationships with indirect channel partners. In particular, a significant element of the Company's strategy is to embed its technology in products offered by OEMs for resale or as a hosted application to such OEMs' customers and end-users. The Company also intends to establish and expand its relationships with resellers and systems integrators so that such resellers and systems integrators will increasingly recommend its products to their clients. The Company's future success will depend on the ability of its indirect channel partners to sell and support its products. If the sales and implementation cycles of its indirect channel partners are lengthy or variable or its OEMs experience difficulties embedding its technology into their products or it fails to train the sales and customer support personnel of such indirect channel partners in a timely or effective fashion, the Company's business, operating results and financial condition would be materially harmed.

Although the Company is currently investing, and plans to continue to invest, significant resources to expand and develop relationships with OEMs and resellers, it has at times experienced and continues to experience difficulty in establishing and maintaining these relationships. If the Company is unable to successfully expand this distribution channel and secure license agreements with additional OEMs and resellers on commercially reasonable terms, including significant up-front payments of minimum license fees, and extend existing license agreements with existing OEMs on commercially reasonable terms, the Company's operating results would be adversely affected. Any inability by the Company to maintain existing or establish new relationships with indirect channel partners, including systems integrators and resellers, or, if such efforts are successful, a failure of the Company's revenues to increase correspondingly with expenses incurred in pursuing such relationships, would materially harm the Company's business, operating results and financial condition.

**THE COMPANY MAY NOT BE ABLE TO COMPETE SUCCESSFULLY AGAINST ITS CURRENT AND FUTURE COMPETITORS.**

The Company's market is intensely competitive and characterized by rapidly changing technology, evolving standards and product releases by the Company's competitors that are marketed to compete directly with the Company's products. The Company's competition comes in five principal forms:

Competition from current or future Business Intelligence software vendors such as Information Builders and MicroStrategy, each of which offers reporting products;

Competition from other large software vendors such as IBM, Microsoft, Oracle and SAP, to the extent they sell as separate products or include RIA and Performance Management functionality with their applications or databases;

Competition from other software vendors and software development tool vendors including providers of open-source software products that may develop scalable Business Intelligence, Performance Management and RIA products;

Competition from the IT departments of current or potential customers that may develop scalable Business Intelligence, Performance Management and RIA products internally, which may be cheaper and more customized than the Company's products; and

Competition from BIRT. The Company expects that BIRT, which is free, may in the short term cannibalize some smaller sales of its Business Intelligence and RIA products.

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Most of the Company's current and potential competitors have significantly greater financial, technical, marketing and other resources than it does. These competitors may be able to respond more quickly to new or emerging technologies and changes in customer requirements or devote greater resources to the development, promotion and sales of their products than the Company. Also, most current and potential competitors have greater name recognition and the ability to leverage a significant installed customer base. These companies have released and can continue to release competing Business Intelligence, Performance Management and RIA software products or significantly increase the functionality of their existing software products, either of which could result in a loss of market share for the Company. The Company expects additional competition as other established and emerging companies enter the Business Intelligence, Performance Management and RIA software market and new products and technologies are introduced. Increased competition could result in price reductions, fewer customer orders, reduced gross margins, longer sales cycles and loss of market share, any of which would harm the Company's business, operating results and financial condition.

Current and potential competitors may make strategic acquisitions or establish cooperative relationships among themselves or with third parties, thereby increasing their ability to address the needs of the Company's customers. Also, the Company's current or future channel partners may have established in the past, or may in the future, establish cooperative relationships with the Company's current or potential competitors, thereby limiting the Company's ability to sell its products through particular distribution channels. It is possible that new competitors or alliances among current and new competitors may emerge and rapidly gain significant market share. Such competition could reduce the Company's revenues from license fees and services from new or existing customers on terms favorable to us. If the Company is unable to compete successfully against current and future competitors, the Company's business, operating results and financial condition would be materially harmed.

**IF THE MARKET FOR BUSINESS INTELLIGENCE, RIA AND PERFORMANCE MANAGEMENT SOFTWARE DOES NOT GROW AS THE COMPANY EXPECTS, ITS BUSINESS WOULD BE SERIOUSLY HARMED.**

The Company cannot be certain that the market for Business Intelligence and RIA and Performance Management software products will continue to grow or that, even if the market does grow, businesses will purchase the Company's products. If the market for Business Intelligence and RIA and Performance Management software products declines, fails to grow or grows more slowly than the Company expects, its business, operating results and financial condition would be harmed. To date, all of the Company's revenues have been derived from licenses for its Business Intelligence and RIA and software and Performance Management related products and services, and it expects this to continue for the foreseeable future. The Company has spent, and intends to continue to spend, considerable resources educating potential customers and indirect channel partners about Business Intelligence and RIA and Performance Management software and its products. However, if such expenditures do not enable its products to achieve any significant degree of market acceptance, the Company's business, operating results and financial condition would be materially harmed.

**BECAUSE THE SALES CYCLES OF THE COMPANY'S PRODUCTS ARE LENGTHY AND VARIABLE, ITS QUARTERLY RESULTS MAY FLUCTUATE.**

The purchase of the Company's products by its end-user customers for deployment within the customer's organization typically involves a significant commitment of capital and other resources, and is therefore subject to delays that are beyond the Company's control. These delays can arise from a customer's internal procedures to approve large capital expenditures, budgetary constraints, the testing and acceptance of new technologies that affect key operations and general economic and political events. The sales cycle for initial orders and larger follow-on orders for the Company's products can be lengthy and variable. Additionally, sales cycles for sales of the Company's products to OEMs tend to be longer, ranging from 6 to 24 months or more, and may involve convincing the OEMs' entire organization that the Company's products are the appropriate software for their applications. This time period does not include the sales and implementation cycles of such OEMs' own products, which can be longer than the Company's sales and implementation cycles. Certain of the Company's customers have in the past, or may in the future, experience difficulty completing the initial implementation of Actuate's products. Any difficulties or delays in the initial implementation by the Company's end-user customers or indirect channel partners could cause such customers or partners to reject the Company's software or lead to the delay or non-receipt of future orders for the large-scale deployment of its products, in which case the Company's business, operating results and financial condition would be materially harmed.

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**ADVANCES IN HARDWARE AND SOFTWARE TECHNOLOGY MAY CAUSE OUR SOFTWARE REVENUE TO DECLINE.**

In the past, the Company has licensed software for a certain number of processors or CPUs to many of its customers. Advances in hardware technology, including, but not limited to, greater CPU clock speeds, multiple-core processors and virtualization, have afforded software performance gains to some customers, causing them to defer additional software purchases from the Company. The occurrence of any of these events, and other future advances, could seriously harm the Company's business, operating results and financial condition. Use of the Company's software on more advanced hardware than the hardware on which the software was originally installed, without payment of a transfer fee, is prohibited by the terms of applicable license agreements or Company policies. The Company intends to require compliance with such terms. As a result of its enforcement efforts, customers may defer or cease purchasing additional software or maintenance and support. The occurrence of any of these events could materially harm the Company's business, operating results and financial condition.

**IF THE COMPANY IS UNABLE TO FAVORABLY ASSESS THE EFFECTIVENESS OF ITS INTERNAL CONTROL OVER FINANCIAL REPORTING IN FUTURE PERIODS OR IF THE COMPANY'S INDEPENDENT AUDITORS ARE UNABLE TO PROVIDE AN UNQUALIFIED ATTESTATION REPORT ON SUCH ASSESSMENT, THE COMPANY'S STOCK PRICE COULD BE ADVERSELY AFFECTED.**

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, as amended (Section 404), the Company's management is required to report on, and its independent auditors are required to attest to, the effectiveness of the Company's internal controls over financial reporting on an ongoing basis. The Company's assessment, testing and evaluation of the design and operating effectiveness of its internal control over financial reporting are ongoing. Management assessed the effectiveness of its internal control over financial reporting as of December 31, 2007, and this assessment identified a material weakness in the Company's internal control over financial reporting related to its income tax provision. Specifically, the Company did not maintain effective controls over the review of the income tax provision calculation by someone other than the preparer. During the fiscal year 2008, the Company modified its internal control over financial reporting with respect to accounting for income taxes. The Company used a third-party tax service provider to complete the preparation, reconciliation and analysis of its income tax provision and income tax related accounts and modified its review procedures over schedules, supporting the Company's income tax provision. As a result of these actions, management has concluded that the Company has remediated the material weakness as of the end of the period covered by this report. The Company cannot predict the outcome of its testing in future periods. If in future periods the Company concludes that its internal control over financial reporting is not effective, it may be required to change its internal control over financial reporting to remediate deficiencies, and investors may lose confidence in the reliability of its financial statements, causing the Company's stock price to decline significantly.

**SECTION 404 AND REGULATORY CHANGES HAVE CAUSED THE COMPANY TO INCUR INCREASED COSTS AND OPERATING EXPENSES, INCLUDING ADDITIONAL COST AND EXPENSES ASSOCIATED WITH HIRING QUALIFIED PERSONNEL TO COMPLY WITH SUCH REGULATORY REQUIREMENT.**

The Sarbanes-Oxley Act of 2002 and regulatory changes by the SEC and Nasdaq have caused the Company to incur significant increased costs. In particular, the rules governing the standards that must be met for management to assess its internal controls over financial reporting under Section 404 are complex, and require significant documentation, testing and possible remediation. This ongoing process of reviewing, documenting and testing the Company's internal controls over financial reporting has resulted in, and will likely continue to result in ongoing cost to the Company. Furthermore, achieving and maintaining compliance with Sarbanes-Oxley and other new rules and regulations has and will continue to require the Company to hire additional personnel and to use additional outside legal, accounting and advisory services.

In addition, any acquisitions made by the Company will also put a significant strain on its management, information systems and resources. Any expansion of the Company's international operations will lead to increased financial and administrative demands associated with managing its international operations and managing an increasing number of relationships with foreign partners and customers and expanded treasury functions to manage foreign currency risks, all of which will require the Company to incur additional cost to implement necessary changes to maintain effective internal controls over financial reporting.

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### **IF THE COMPANY DOES NOT RESPOND TO RAPID TECHNOLOGICAL CHANGES, ITS PRODUCTS COULD BECOME OBSOLETE.**

The market for the Company's products is characterized by rapid technological changes, frequent new product introductions and enhancements, changing customer demands, and evolving industry standards. Any of these factors can render existing products obsolete and unmarketable. The Company believes that its future success will depend in large part on its ability to support current and future releases of popular operating systems and computer programming languages, databases and software applications, to timely develop new products that achieve market acceptance and to meet an expanding range of customer requirements. If the announcement or introduction of new products by the Company or its competitors or any change in industry standards causes customers to defer or cancel purchases of existing products, the Company's business, operating results and financial condition would be harmed.

As a result of the complexities inherent in Business Intelligence, RIA and Performance Management software, major new products and product enhancements can require long development and testing periods. In addition, customers may delay their purchasing decisions in anticipation of the general availability of new or enhanced versions of the Company's products. As a result, significant delays in the general availability of such new releases or significant problems in the installation or implementation of such new releases could harm the Company's business, operating results and financial condition. If the Company fails to successfully develop, on a timely and cost effective basis, product enhancements or new products that respond to technological change, evolving industry standards or customer requirements or such new products and product enhancements fail to achieve market acceptance, the Company's business, operating results and financial condition would be harmed.

### **IF THE COMPANY DOES NOT RELEASE NEW PRODUCTS AND ENHANCEMENTS TO EXISTING PRODUCTS IN A TIMELY MANNER OR IF SUCH NEW PRODUCTS AND ENHANCEMENTS, INCLUDING THE COMPANY'S OPEN SOURCE PROJECT, FAIL TO ACHIEVE MARKET ACCEPTANCE, THE COMPANY'S BUSINESS COULD BE SERIOUSLY HARMED.**

The Company believes that its future success will depend in large part on the success of new products and enhancements to its products that it makes generally available. Prior to the release of any new products or enhancements, the products must undergo a long development and testing period. To date, the development and testing of new products and enhancements have taken longer than expected. In the event the development and testing of new products and enhancements continue to take longer than expected, the release of new products and enhancements will be delayed. If the Company fails to release new products and enhancements in a timely manner, its business, operating results and financial condition would be harmed. In addition, if such new products and enhancements do not achieve market acceptance, the Company's business, operating results and financial condition would be harmed.

The Company has developed a BIRT open source product through its involvement in the Eclipse Foundation. The Company hopes that BIRT and a commercialized version of BIRT will be widely adopted by Java developers and will result in such developers recommending to their employees and customers that they license the Company's commercially available products. If BIRT does not achieve market acceptance and result in promoting sales of commercially available products, the Company's business, operating results and financial condition may be harmed.

### **THE SUCCESS OF THE COMPANY'S OPEN-SOURCE BIRT INITIATIVE IS DEPENDENT ON BUILDING A DEVELOPER COMMUNITY AROUND BIRT.**

The success of the Company's BIRT initiative is dependent on the open source contributions of third-party programmers and corporations, and if they cease to make these contributions to the Eclipse open source project, the BIRT project, or the general open source movement, the Company's BIRT product strategy could be adversely affected. If key members, or a significant percentage, of this group of developers or corporations decides to cease development of Eclipse, BIRT or other open source applications, the Company would have to either rely on another party (or parties) to develop these technologies, develop them itself or adapt its open source product strategy accordingly. This could increase the Company's development expenses, delay its product releases and upgrades or adversely impact customer acceptance of open source offerings.



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**THE COMPANY'S INTERNATIONAL OPERATIONS ARE SUBJECT TO SIGNIFICANT RISKS.**

A substantial portion of the Company's revenues is derived from international sales. International operations and sales are subject to a number of risks, any of which could harm the Company's business, operating results and financial conditions. These risks include the following:

Economic and political instability, including war and terrorism or the threat of war and terrorism;

Difficulty of managing an organization spread across many countries;

Multiple and conflicting tax laws and regulations;

Costs of localizing products for foreign countries;

Difficulty in hiring employees and difficulties and high costs associated with terminating employees and restructuring operations in foreign countries;

Trade laws and business practices favoring local competition;

Dependence on local vendors;

Increasing dependence on resellers in certain geographies;

Compliance with multiple, conflicting and changing government laws and regulations;

Weaker intellectual property protection in foreign countries and potential loss of proprietary information due to piracy or misappropriation;

Longer sales cycles;

Import and export restrictions and tariffs;

Difficulties in staffing and managing foreign operations;

The significant presence of some of our competitors in certain international markets;

Greater difficulty or delay in accounts receivable collection; and

Foreign currency exchange rate fluctuations.

The Company believes that, over time, an increasing portion of its revenues and costs will be denominated in foreign currencies. To the extent such denomination in foreign currencies does occur, gains and losses on the conversion to U.S. dollars of accounts receivable, accounts payable and other monetary assets and liabilities arising from international operations may contribute to fluctuations in the Company's results of operations. Although the Company may in the future decide to undertake foreign exchange hedging transactions to cover a portion of its foreign currency transaction exposure, it currently does not attempt to cover any foreign currency exposure. If it is not effective in any future foreign exchange hedging transactions in which it engages, the Company's business, operating results and financial condition could be materially harmed.

**THE COMPANY'S EXECUTIVE OFFICERS AND CERTAIN KEY PERSONNEL ARE CRITICAL TO ITS BUSINESS AND IT MAY NOT BE ABLE TO RECRUIT AND RETAIN THE PERSONNEL IT NEEDS.**

The Company's future success depends upon the continued service of its executive officers and other key engineering, sales, marketing and customer support personnel. None of its officers or key employees is bound by an employment agreement for any specific term. If the Company loses the service of one or more of its key employees, or if one or more of its executive officers or key employees decide to join a competitor or otherwise compete directly or indirectly with it, it could have a significant adverse effect on the Company's business.

In addition, because experienced personnel in the Company's industry are in high demand and competition for their talents is intense, the Company has relied on its ability to grant stock options as one mechanism for recruiting and retaining this highly skilled talent. Accounting standards require the expensing of stock options, which impairs the Company's ability to provide these incentives without incurring significant compensation costs. There can be no assurance that the Company will continue to successfully attract and retain key personnel in the future.

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**CHANGES IN OR INTERPRETATIONS OF, ACCOUNTING STANDARDS COULD RESULT IN UNFAVORABLE ACCOUNTING CHARGES.**

The Company prepares its Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States of America. These principles are subject to interpretation by the SEC and various bodies formed to interpret and create appropriate accounting standards. The Company's accounting policies that recently have been or may be affected by changes in the accounting rules are as follows:

Software revenue recognition;

Accounting for income taxes;

Accounting for business combinations and related goodwill;

Accounting for stock issued to employees; and

Assessing fair value of financial and non-financial assets.

A change in accounting standards applicable to us can have a significant effect on the Company's reported results and may even retroactively affect previously reported transactions.

**THE COMPANY MAY BE UNABLE TO SUSTAIN OR INCREASE ITS PROFITABILITY.**

While the Company was profitable in its last five fiscal years, it incurred net losses during fiscal year 2003 and 2002. Its ability to sustain or increase profitability on a quarterly or annual basis will be affected by changes in its business. It expects its operating expenses to increase as its business grows, and it anticipates that it will make investments in its business. Therefore, the Company's results of operations will be harmed if its revenues do not increase at a rate equal to or greater than increases in its expenses or are insufficient for it to sustain profitability.

**IF THE COMPANY OVERESTIMATES REVENUES, IT MAY BE UNABLE TO REDUCE ITS EXPENSES TO AVOID OR MINIMIZE A NEGATIVE IMPACT ON ITS RESULTS OF OPERATIONS.**

The Company's revenues are difficult to forecast and are likely to fluctuate significantly from period to period. The Company bases its operating expense budgets on expected revenue trends. The Company's estimates of sales trends may not correlate with actual revenues in a particular quarter or over a longer period of time. Variations in the rate and timing of conversion of the Company's sales prospects into actual licensing revenues could cause it to plan or budget inaccurately and those variations could adversely affect the Company's financial results. In particular, delays, reductions in amount or cancellation of customers' purchases would adversely affect the overall level and timing of the Company's revenues and its business, results of operations and financial condition could be harmed. In addition, many of its expenses, such as office and equipment leases and certain personnel costs, are relatively fixed. It may be unable to adjust spending quickly enough to offset any unexpected revenue shortfall. Accordingly, any shortfall in revenue may cause a material variation in operating results in any period.

**IF THE COMPANY'S PRODUCTS CONTAIN MATERIAL DEFECTS, ITS REVENUES MAY DECLINE.**

Software products as complex as those offered by the Company often contain errors or defects, particularly when first introduced, when new versions or enhancements are released and when configured to individual customer computing systems. The Company currently has known errors and defects in its products. Despite testing conducted by the Company, if additional defects and errors are found in current versions, new versions or enhancements of its products after commencement of commercial shipment, or if such errors or defects cannot be cured or repaired timely, it could result in the loss of revenues or a delay in market acceptance or an increase in the rate of return of the Company's products. The occurrence of any of these events could materially harm the Company's business, operating results and financial condition.

**THE COMPANY MAY BE SUBJECT TO PRODUCT LIABILITY CLAIMS.**

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Although license agreements with its customers typically contain provisions designed to limit the Company's exposure to potential product liability claims, it is possible that such limitation of liability provisions may not be effective as a result of existing or future laws or unfavorable judicial decisions. The sale and support of the Company's products may entail the risk of such claims, which are likely to be substantial in light of the use of its products in business-critical applications. A product liability claim brought against the Company could materially harm its business, operating results and financial condition.

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**THE PROTECTION OF OUR PROPRIETARY RIGHTS MAY BE INADEQUATE.**

The Company has a small number of issued and pending U.S. patents expiring at varying times ranging from 2015 to 2020. The Company relies primarily on a combination of copyright and trademark laws, trade secrets, confidentiality procedures and contractual provisions to protect its proprietary technology. For example, the Company licenses its software pursuant to click-wrap or signed license agreements that impose certain restrictions on licensees' ability to utilize the software. In addition, the Company seeks to avoid disclosure of its intellectual property, including by requiring those persons with access to its proprietary information to execute confidentiality agreements with the Company and by restricting access to its source code. The Company takes precautions to protect our software, certain documentation, and other written materials under trade secret and copyright laws, which afford only limited protection.

Despite the Company's efforts to protect its proprietary rights, unauthorized parties may attempt to copy aspects of its products or to obtain and use information that the Company regards as proprietary. Policing unauthorized use of the Company's products is difficult, and while it is unable to determine the extent to which piracy of its software products exists, software piracy can be expected to be a persistent problem. In addition, the laws of many countries do not protect the Company's proprietary rights to as great an extent as do the laws of the United States. If the Company's means of protecting its proprietary rights is not adequate or its competitors independently develop similar technology, the Company's business could be materially harmed.

**THE COMPANY'S COMMON STOCK PRICE MAY BE VOLATILE, WHICH COULD RESULT IN SUBSTANTIAL LOSSES FOR STOCKHOLDERS.**

The market price of shares of the Company's common stock has been and is likely to continue to be highly volatile and may be significantly affected by factors such as the following:

Actual or anticipated fluctuations in its operating results;

Changes in the economic and political conditions in the United States and abroad;

Terrorist attacks, war or the threat of terrorist attacks and war;

The announcement of mergers or acquisitions by the Company or its competitors;

Developments in ongoing or threatened litigation;

Announcements of technological innovations;

Failure to comply with the requirements of Section 404 of the Sarbanes-Oxley Act;

New products, including open source products, or new contracts announced by it or its competitors;

Developments with respect to copyrights or proprietary rights;

Price and volume fluctuations in the stock market;

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Changes in corporate purchasing of Business Intelligence, RIA and Performance Management software;

Adoption of new accounting standards affecting the software industry; and

Changes in financial estimates by securities analysts.

In addition, following periods of volatility in the market price of a particular company's securities, securities class action litigation has often been brought against such companies. If the Company is involved in such litigation, it could result in substantial costs and a diversion of management's attention and resources and could materially harm the Company's business, operating results and financial condition.

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**CHANGES IN CORPORATE INCOME TAX LAWS, INCOME TAX RATES OR NEGATIVE INCOME TAX RULINGS COULD ADVERSELY IMPACT THE COMPANY'S FINANCIAL RESULTS.**

The Company is taxable principally in the United States and certain jurisdictions in Europe and Asia/Pacific. All of these jurisdictions have in the past and may in the future make changes to their corporate income tax laws and/or corporate income tax rates, which could increase or decrease the Company's future income tax provision. While the Company believes that all material income tax liabilities are reflected properly in its Consolidated Balance Sheet, it has no assurance that it will prevail in all cases in the event the taxing authorities disagree with its interpretations of the tax law. Future levels of research and development spending will impact the Company's entitlement to related tax credits, which generally lower its effective income tax rate. Future effective income tax rates could be adversely affected if tax laws are enacted that are targeted to eliminate the benefits of the Company's tax structure and if its earnings are lower than anticipated in jurisdictions where the Company has statutory tax rates lower than tax rates in the United States or other higher tax jurisdictions.

**CERTAIN OF THE COMPANY'S CHARTER PROVISIONS AND DELAWARE LAW MAY PREVENT OR DETER A CHANGE IN CONTROL OF ACTUATE.**

The Company's Certificate of Incorporation, as amended and restated (the "Certificate of Incorporation"), and Bylaws, as amended and restated ("Bylaws"), contain certain provisions that may have the effect of discouraging, delaying or preventing a change in control of the Company or unsolicited acquisition proposals that a stockholder might consider favorable, including provisions authorizing the issuance of blank check preferred stock, eliminating the ability of stockholder to act by written consent and requiring stockholders to provide advance notice for proposals and nomination of directors at stockholder meetings. In addition, certain provisions of Delaware law and the Company's stock option plans may also have the effect of discouraging, delaying or preventing a change in control or unsolicited acquisition proposals. The anti-takeover effect of these provisions may also have an adverse effect on the public trading price of the Company's common stock.

**DEPENDENCE ON THE FINANCIAL SERVICES INDUSTRY COULD SIGNIFICANTLY AFFECT THE COMPANY'S REVENUES.**

A significant portion of the Company's revenues are derived from customers in the financial services industry and the Company expects it will continue to derive a significant portion of its revenues from these customers for the foreseeable future. Accordingly, unfavorable economic conditions adversely impacting the financial services industry has had a material adverse effect on the Company's business, financial condition and results of operations. For example, the financial services industry has experienced and may continue to experience cyclical fluctuations in profitability, which may affect timing of, or actual purchases of, the Company's products which would have a material adverse effect on the Company's business, financial condition and results of operations.

**IF THE RECENT CREDIT MARKET CONDITIONS CONTINUE OR DETORiate FURTHER, IT COULD HAVE A MATERIAL ADVERSE IMPACT ON OUR INVESTMENT PORTFOLIO.**

Recent U.S. sub-prime mortgage defaults have had a significant impact across various sectors of the financial markets, causing global credit and liquidity issues. The short-term funding markets experienced credit issues throughout fiscal year 2008. This led to liquidity disruption in asset-backed commercial paper and failed auctions in the auction rate market. If the global credit market continues to deteriorate, our investment portfolio may be impacted and we could determine that some of our investments are other than temporarily impaired. This could have a material adverse impact on our results of operations and financial condition.

Our investment portfolio includes Auction Rate Securities ("ARS") which are investments with contractual maturities. They are usually found in the form of municipal bonds, a pool of student loans or collateralized debt obligations whose interest rates are subject to reset through an auction process. The ARS held by us are primarily backed by highly rated municipal issuers. As of March 31, 2009, we had \$16.4 million invested in ARS which included a realized loss of approximately \$84,000 related to the difference between the gains recognized on the Put Option and the realized loss on the \$16.5 million (par value) portion of our ARS portfolio.

All ARS are classified as long-term investments at March 31, 2009 regardless of the underlying reset date. The ARS are investments with long-term contractual maturities. These ARS investments are intended to provide liquidity via an auction process that resets the applicable interest rate at predetermined calendar intervals, allowing investors to either roll over their holdings or gain immediate liquidity by selling such interests at par. The recent uncertainties in the credit markets have affected all of the Company's holdings in ARS investments and auctions for the Company's investments in these securities have failed to settle on their respective settlement dates.





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In November 2008, we elected to participate in a rights offering by UBS AG ( *UBS* ), our investment broker, which provides us with rights (the *Put Option* ) to sell UBS \$16.5 million of our ARS portfolio at par value, at any time during a two-year sale period beginning June 30, 2010. By electing to participate in the rights offering, we granted UBS the right, exercisable at any time prior to June 30, 2010 or during the two-year sale period, to purchase or cause the sale of our ARS (the *Call Right* ). UBS has stated that it will only exercise the *Call Right* for the purpose of restructurings, dispositions or other solutions that will provide their clients with par value for their ARS.

The ARS investments are not currently liquid and the Company will not be able to access these funds until a future auction of these investments is successful, we exercise the *Put Option* , or a buyer is found outside of the auction process. All of the ARS investments were investment grade quality and were in compliance with the Company's investment policy at the time of acquisition. The Company currently has the ability and intends to hold these ARS investments until a recovery of the auction process, until we exercise the *Put Option*, or until maturity.

If we need to access the funds associated with ARS but are unable to do so, our operations and financial position could be materially harmed.

**WE HAVE SUBSTANTIAL INDEBTNESS AND DEBT SERVICE REQUIREMENTS.**

On November 2, 2008, Actuate entered into a four year revolving line of Credit Agreement with Wells Fargo Foothill, LLC ( *Wells Fargo* ) as the arranger, administrative agent and lender (the *Credit Agreement* ). The *Credit Agreement* was effective as of November 3, 2008. The Company used \$30.0 million of the proceeds from the *Credit Agreement* in the tender offer it completed in December 2008 and for working capital, issuance of commercial and standby letters of credit, capital expenditures and other general corporate purposes. At March 31, 2009, our outstanding debt under the *Credit Agreement* was approximately \$30 million.

The *Credit Agreement* allows for cash borrowings and letters of credit under a secured revolving credit facility of up to a maximum of \$50.0 million, but in any event not to exceed 80% of the Company's Trailing Recurring Revenue (as defined in the *Credit Agreement*). Interest will accrue based on a floating rate based on, at the Company's election, (i) LIBOR or (ii) the greater of (a) the Federal Funds Rate plus an applicable margin or (b) Wells Fargo's prime rate, in each case, plus an applicable margin based on the outstanding balance of the amount drawn down under the *Credit Agreement*. If the Company's borrowings and letter of credit usage plus any bank product reserves established by Wells Fargo exceeds 80% of its Trailing Recurring Revenue (as defined in the *Credit Agreement*), or if the sum of available funds under the *Credit Agreement* plus Qualified Cash (as defined in the *Credit Agreement*) is less than \$10,000,000, the Company will be required to meet certain EBITDA targets and be subject to a limit on annual capital expenditures, subject to a cure mechanism described in the *Credit Agreement*. The Company is required to make interest payments and pay an unused commitment fee on a monthly basis. The *Credit Agreement* includes limitations on the Company's ability to incur debt, grant liens, make acquisitions, make certain restricted payments such as dividend payments, and dispose of assets. The events of default under the *Credit Agreement* include payment defaults, cross defaults with certain other indebtedness, breaches of covenants and bankruptcy events. In the case of a continuing event of default, the lenders under the *Credit Agreement* may, among other remedies, eliminate their commitments to make credit available, declare due all unpaid principal amounts outstanding, and require cash collateral for any letter of credit obligations and foreclose on all collateral.

Because of our indebtedness, a significant portion of our cash flow from operations is and will be required for debt service. Our levels of debt could have negative consequences for us. You should note that:

a substantial portion of our cash flow is, and will be, dedicated to debt service and is not, and will not be, available for other purposes;

our ability to obtain additional financing for working capital, capital expenditures, acquisitions and general corporate or other purposes may be impaired in the future;

certain of our borrowings are, and will be, at variable rates of interest, which may expose us to the risk of increases in interest rates; and

our level of indebtedness could make us more vulnerable to economic downturns, limit our ability to withstand competitive pressures and reduce our flexibility in responding to changing business and economic conditions.

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We believe that cash flows from operations will be sufficient to meet our current debt service requirements for interest and any required prepayments under the Credit Agreement. However, if such cash flow is not sufficient, we may be required to issue additional debt or equity securities, refinance our obligations, or take other actions in order to make such scheduled payments. We cannot be sure that we would be able to effect any such transactions on favorable terms, if at all. Failure to do so may cause an event of default under the Credit Agreement, which will have a material adverse effect on our business, operating results and financial conditions.

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**OUR DEBT COVENANTS RESTRICT OUR FINANCIAL AND OPERATIONAL FLEXIBILITY.**

As discussed above, the Credit Agreement contains a number of financial covenants, which, among other things, require us to maintain specified financial ratios and impose certain limitations on us with respect to lines of business, mergers, investments and acquisitions, additional indebtedness, distributions, guarantees, liens and encumbrances. Our ability to meet the financial ratios can be affected by operating performance or other events beyond our control, and we cannot assure you that we will meet those ratios and failure to do so may cause an event of default under the Credit Agreement. Our indebtedness under the Credit Agreement is secured by a lien on substantially all of our assets and of our subsidiaries, by a pledge of our operating and license subsidiaries' stock and by a guarantee of our subsidiaries. If the amounts outstanding under the Credit Agreement were accelerated due to an event of default, the lenders could proceed against such available collateral by forcing the sales of these assets.

**Item 6. Exhibits**

- 31.1 Rule 13a-14(a)/15d-14(a) Certification of the Chief Executive Officer
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of the Chief Financial Officer
- 32.1 Section 1350 Certifications

*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, thereunto duly authorized.

Actuate Corporation  
(Registrant)

Dated: May 8, 2009

By: /s/ DANIEL A. GAUDREAU  
Daniel A. Gaudreau  
Senior Vice President,  
Operations and Chief Financial Officer  
(Principal Financial and Accounting Officer)