

ACTUATE CORP  
Form 4  
January 20, 2015

**FORM 4**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
MARSHALL KENNETH E

(Last) (First) (Middle)

ACTUATE CORPORATION, 951  
MARINERS ISLAND BLVD.

(Street)

SAN MATEO, CA 94404

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
ACTUATE CORP [BIRT]

3. Date of Earliest Transaction  
(Month/Day/Year)  
01/16/2015

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director  10% Owner  
 Officer (give title below)  Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)

Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Beneficial Ownership (Instr. 4)	
				(A) or (D)	Price			
				Code	V	Amount	(D)	Price

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474  
(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)**

1. Title of Derivative Security	2. Conversion or Exercise	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any	4. Transaction Code	5. Number of Derivative Securities	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)
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(Instr. 3)	Price of Derivative Security	(Month/Day/Year)	(Instr. 8)	Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		Date Exercisable	Expiration Date	Title	Amount or Number of Shares
				Code	V (A) (D)				
Stock Option (right to buy)	\$ 4.03	01/16/2015	D		20,000	<u>(1)</u>	05/30/2016	Common stock	20,000
Stock Option (right to buy)	\$ 4.2	01/16/2015	D		16,000	<u>(2)</u>	05/26/2020	Common stock	16,000
Stock Option (right to buy)	\$ 4.6	01/16/2015	D		25,000	<u>(3)</u>	05/21/2019	Common stock	25,000
Stock Option (right to buy)	\$ 4.65	01/16/2015	D		25,000	<u>(4)</u>	05/21/2018	Common stock	25,000
Stock Option (right to buy)	\$ 5.47	01/16/2015	D		16,000	<u>(5)</u>	05/25/2021	Common stock	16,000
Stock Option (right to buy)	\$ 6.2	01/16/2015	D		25,000	<u>(6)</u>	05/30/2017	Common stock	25,000
Restricted stock units	\$ 0	01/16/2015	D		16,000	<u>(7)</u>	<u>(8)</u>	Common stock	16,000
Restricted stock units	\$ 0	01/16/2015	D		8,000	<u>(9)</u>	<u>(10)</u>	Common stock	8,000
Restricted stock units	\$ 0	01/16/2015	D		16,000	<u>(11)</u>	<u>(12)</u>	Common stock	16,000
Restricted stock units	\$ 0	01/16/2015	D		8,000	<u>(13)</u>	<u>(14)</u>	Common stock	8,000
Restricted stock units	\$ 0	01/16/2015	D		8,000	<u>(15)</u>	<u>(16)</u>	Common stock	8,000

# Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
MARSHALL KENNETH E ACTUATE CORPORATION 951 MARINERS ISLAND BLVD. SAN MATEO, CA 94404	X			

# Signatures

/s/ Kenneth E. Marshall  
Date: 01/20/2015  
 \*\*Signature of Reporting Person Date

# Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
  - \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- Pursuant to the terms of the Agreement and Plan of Merger dated December 5, 2014 (the "Merger Agreement") by and among Actuate Corporation ("Actuate"), Open Text Corporation ("Parent") and Asteroid Acquisition Corporation ("Merger Sub"), on January 16, 2015, at the Effective Time (as defined in the Merger Agreement) by virtue of the Merger, each company stock option, whether or not vested and exercisable, that was outstanding and unexercised immediately prior to the Effective Time, accelerated and was automatically converted in to the right to receive the excess, if any, of the price per share of \$6.60 (the "Offer Price"), without interest thereon and less any applicable withholding taxes (the "Merger Consideration") over the exercise price per share of the stock option, subject to any applicable tax withholding.
- (1) and exercisable, that was outstanding and unexercised immediately prior to the Effective Time, accelerated and was automatically converted in to the right to receive the excess, if any, of the price per share of \$6.60 (the "Offer Price"), without interest thereon and less any applicable withholding taxes (the "Merger Consideration") over the exercise price per share of the stock option, subject to any applicable tax withholding.
  - (2) See footnote 1.
  - (3) See footnote 1.
  - (4) See footnote 1.
  - (5) See footnote 1.
  - (6) See footnote 1.
- Pursuant to the Merger Agreement, on January 16, 2015, at the Effective Time by virtue of the Merger, (i) each time-vested restricted stock unit that had not vested as of the Effective Time (other than restricted stock units held by non-employee directors, which accelerated at the Effective Time), was converted into the right to receive the Merger Consideration in respect of each share underlying the restricted stock unit, subject to the same terms and conditions (including vesting and settlement schedules and taking into account any elective deferrals) as applied to such restricted stock unit immediately prior to the Effective Time, subject to any applicable tax withholding and (ii) each restricted stock unit that had vested but not settled (including each performance-vested restricted stock unit no longer subject to any performance conditions as of the date of the Merger Agreement), was converted into the right to receive the Merger Consideration in respect of each share underlying
- (7) any elective deferrals) as applied to such restricted stock unit immediately prior to the Effective Time, subject to any applicable tax withholding and (ii) each restricted stock unit that had vested but not settled (including each performance-vested restricted stock unit no longer subject to any performance conditions as of the date of the Merger Agreement), was converted into the right to receive the Merger Consideration in respect of each share underlying
  - (8) See footnote 7.
  - (9) See footnote 7.
  - (10) See footnote 7.
  - (11) See footnote 7.
  - (12) See footnote 7.
  - (13) See footnote 7.
  - (14) See footnote 7.
  - (15) See footnote 7.
  - (16) See footnote 7.

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Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.  
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