ACTUATE CORP
Form 10-Q
November 06, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 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)

Delaware	**94-3193197**
(State of incorporation)	**(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 x 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	x
Non-accelerated filer	¨ (Do not check if a smaller reporting company)	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 x

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 September 30, 2009**
Common Stock, par value $.001 per share	45,394,709

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Actuate Corporation

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Part I. Financial Information

Item 1. Financial Statements

ACTUATE CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands except share and per share data)

(unaudited)

	September 30, 2009	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 28,029	$ 24,772
Short-term investments	42,245	17,278
Accounts receivable, net of allowance of $710 and $606 at September 30, 2009 and December 31, 2008, respectively	20,368	28,017
Other current assets	7,982	6,620
Total current assets	98,624	76,687
Property and equipment, net	4,135	4,729
Goodwill	36,114	36,114
Other purchased intangibles, net	1,125	1,800
Non-current deferred tax assets	13,047	12,602
Non-current investments		16,391
Other assets	1,782	2,189
	$ 154,827	$ 150,512
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 819	$ 2,067
Restructuring liabilities	2,774	3,206
Accrued compensation	4,349	4,514
Other accrued liabilities	5,158	5,299
Deferred revenue	35,937	40,900
Total current liabilities	49,037	55,986
Long-term liabilities:		
Note payable	30,000	30,000
Other liabilities	852	1,054
Long-term deferred revenue	1,614	2,472
Long term income tax payable	776	1,660
Restructuring liabilities, less current portion	884	3,092
Total long-term liabilities	34,126	38,278
Non-controlling interest in subsidiary	633	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 78,503,314 and 75,514,061 shares, respectively; outstanding 45,394,709 and 44,169,649 shares, respectively	45	44
Additional paid-in capital	176,510	160,619
Treasury stock, at cost 33,108,605 shares and 31,344,412, respectively	(127,338)	(117,256)
Accumulated other comprehensive loss	(72)	(887)
Retained earnings	21,886	13,144
Total stockholders equity	71,031	55,664
	$ 154,827	$ 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)

	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
Revenues:				
License fees	$ 8,620	$ 10,021	$ 25,907	$ 29,920
Maintenance	19,340	20,406	56,889	56,791
Professional Services	1,391	3,254	5,352	11,091
Total revenues	29,351	33,681	88,148	97,802
Costs and expenses:				
Cost of license fees	267	350	703	1,066
Cost of services	4,185	5,299	13,718	17,861
Sales and marketing	10,231	13,168	31,433	39,982
Research and development	4,998	5,459	15,256	16,860
General and administrative	5,085	5,053	14,717	14,457
Amortization of other purchased intangibles	170	237	510	711
Restructuring charges	129	672	240	1,075
Total costs and expenses	25,065	30,238	76,577	92,012
Income from operations	4,286	3,443	11,571	5,790
Interest income and other income/(expense), net	(405)	686	179	764
Interest expense	(347)	(3)	(1,057)	(3)
Income before income taxes	3,534	4,126	10,693	6,551
Provision (benefit) for income taxes	395	1,021	1,951	(2,356)
Net income	$ 3,139	$ 3,105	$ 8,742	$ 8,907
Basic net income per share	$ 0.07	$ 0.05	$ 0.19	$ 0.15
Shares used in basic per share calculation	45,580	60,387	45,026	60,505
Diluted net income per share	$ 0.06	$ 0.05	$ 0.18	$ 0.13
Shares used in diluted per share calculation	50,484	65,397	49,235	66,075

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

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ACTUATE CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands, unaudited)

	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
Operating activities		
Net income	$ 8,742	$ 8,907
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock based compensation expense related to stock options and employee stock purchase plan	5,367	7,091
Amortization of other purchased intangibles	675	1,146
Amortization of debt issuance cost	210	
Depreciation	1,643	1,740
Net operating loss utilizations (adjustments) related to prior acquisitions		(228)
Change in valuation allowance on deferred tax assets	(575)	85
Accretion/amortization on short-term debt securities	118	218
Loss/(gain) on Auction Rate Securities (ARS)	(678)	
Loss on the fair value of put option	607	
Changes in operating assets and liabilities:		
Accounts receivable, net of allowance	7,649	16,393
Other current assets	(314)	829
Accounts payable	(1,248)	(1,167)
Accrued compensation	(165)	(2,170)
Other accrued liabilities	131	(1,654)
Deferred tax assets	115	51
Income taxes receivable	(1,044)	(2,206)
Income taxes payable	(884)	
Other liabilities	(202)	(124)
Restructuring liabilities	(2,640)	(1,817)
Deferred revenue	(5,821)	(2,649)
Net cash provided by operating activities	11,686	24,445
Investing activities		
Purchases of property and equipment	(1,048)	(1,672)
Release of restricted cash	229	
Proceeds from sale and maturity of investments	13,706	53,418
Purchases of short-term investments	(22,243)	(43,385)
Change in other current and non-current assets	(61)	
Net cash provided by (used in) investing activities	(9,417)	8,361
Financing activities		
Tax benefit from exercise of stock options	2,649	
Proceeds from issuance of common stock	7,906	4,932
Stock repurchases	(10,297)	(12,675)
Net cash provided by (used in) financing activities	258	(7,743)
Net increase in cash and cash equivalents	2,527	25,063
Effect of exchange rates on cash and cash equivalents	730	(497)

Cash and cash equivalents at the beginning of the period	24,772	21,468
Cash and cash equivalents at the end of the period	$ 28,029	$ 46,034

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

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, Canada, Switzerland, United Kingdom, Germany, France, Singapore, Japan and China. All intercompany balances and transactions have been eliminated.

As of September 30, 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, we adopted new accounting guidance for noncontrolling interests in subsidiaries as issued by the Financial Accounting Standards Board (FASB). The new accounting guidance establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary, which is sometimes referred to as a minority interest, is a third-party ownership interest in the consolidated entity that should be reported as a component of equity in the consolidated financial statements. Among other requirements, the new guidance requires the consolidated statement of income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. The new guidance also requires disclosure on the face of the consolidated statement of income of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest. The adoption of this accounting guidance did not have a material impact on our consolidated financial statements.

Actuate Japan s financial results are reflected in each revenue, cost of revenue and expense category in the consolidated statement of operations. Through September 30, 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 selling and marketing activities in Japan to add new customers, the future liquidity requirements of Actuate Japan are not expected to be significant.

During the second quarter of 2009, we adopted new accounting guidance related to subsequent events as issued by the FASB. The new requirement establishes the accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. The Company has evaluated subsequent events through November 6, 2009, the issuance date of the financial statements for the three months ended September 30, 2009.

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 authoritative guidance issued by the American Institute of Certified Public Accountants (AICPA) on revenue recognition. 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 physically shipped or electronically made available, 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 fair value 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 which means the full fair value is allocated to the undelivered elements while the remaining value of the arrangement is allocated to the delivered elements. 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, 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

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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.

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.

The Company typically establishes vendor specific objective evidence of fair value under a bell-shaped curve approach. However, for certain types of license transactions, including OEM and site license, the Company uses a stated maintenance renewal approach.

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 nine months of fiscal 2009. If this trend continues, 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 in the Condensed Consolidated Statements of Income in connection with stock options and the Employee Stock Purchase Plan (ESPP) for the three and nine months ended September 30, 2009 and 2008 were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	September 30, 2009	September 30, 2008	September 30, 2009	September 30, 2008
Stock Options	$ 1,320	$ 1,820	$ 4,448	$ 6,307
ESPP	284	260	919	784
Total stock-based compensation	$ 1,604	$ 2,080	$ 5,367	$ 7,091

Income tax benefit	$ 1,429	$	$ 2,649	$

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 ESPP Plan for the nine months ended September 30, 2009 and 2008 are as follows:

	Options Nine Months Ended		**ESPP Nine Months Ended**	
	September 30, 2009	**September 30, 2008**	**September 30, 2009**	**September 30, 2008**
Volatility	57.16 59.03%	59.08 71.49%	69.17 94.69%	43.13 55.79%
Expected term (years)	5.49 5.55	5.55 5.70	0.5	0.5
Risk free interest rate	1.75 2.625%	2.50 3.50%	0.46 0.62%	2.05 2.18%
Expected dividend yield	0%	0%	0%	0%
Annual forfeiture rate	3 4%	3%	N/A	N/A

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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. ESPP shares were not included in the calculation of the common equivalent shares for the periods presented as the impact of these shares in the weighted share calculations were immaterial.

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 September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Weighted-average common shares outstanding	45,580	60,387	45,026	60,505
Weighted-average dilutive stock options outstanding under the treasury stock method	4,904	5,010	4,209	5,570
Weighted-average common shares used in computing diluted net income per share	50,484	65,397	49,235	66,075

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 3,124,635 and 7,600,668 in the three and nine months ended September 30, 2009, respectively. In the three and nine months ended in September 30, 2008, the Company excluded 6,593,990 and 5,883,518 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 $7.23 and $5.56 for the three and nine months ended September 30, 2009, respectively. The weighted average exercise price of excluded stock options was $6.08 and $6.26 for the three and nine months ended September 30, 2008, respectively.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

Income Taxes

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 as discreet items in the interim period in which those items occur. This includes changes in judgment about valuation allowances and the effect of changes in enacted tax laws or rates or tax status.

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.

The Company recognizes and measures uncertain tax positions and 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 gains (losses) on investments that are not included in net income, but rather are recorded directly in stockholders equity. Comprehensive income during the three and nine months of fiscal 2009 and 2008 was comprised of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net income	$ 3,139	$ 3,105	$ 8,742	$ 8,907
Foreign currency translation gain (loss)	664	(1,669)	730	(497)
Unrealized gain (loss) on investments	10	(486)	85	(1,425)
Total comprehensive income	$ 3,813	$ 950	$ 9,557	$ 6,985

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.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

Recent Accounting Pronouncements

During the third quarter of 2009, we adopted the new Accounting Standards Codification (ASC) as issued by the Financial Accounting Standards Board (FASB). The ASC has become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. The ASC is not intended to change or alter existing GAAP. The adoption of the ASC did not have a material impact on our consolidated financial statements.

In August 2009, the FASB issued new accounting guidance related to the measurement and disclosure of liabilities at fair value. This update provides clarification for the fair value measurement of liabilities in circumstances in which a quoted price in an active market for an identical liability is not available. This update is effective for interim periods beginning after August 28, 2009. The Company does not expect the adoption of this standard to have a material effect on its financial position or results of operations.

In June 2009, the FASB issued new accounting guidance which amends the evaluation criteria to identify the primary beneficiary of a variable interest entity (VIE) and requires ongoing reassessment of whether an enterprise is the primary beneficiary of the VIE. The new guidance significantly changes the consolidation rules for VIEs including the consolidation of common structures, such as joint ventures, equity method investments and collaboration arrangements. The guidance is applicable to all new and existing VIEs. The provisions of this new accounting guidance is effective for interim and annual reporting periods ending after November 15, 2009 and will become effective for us beginning in the first quarter of 2010. The Company does not expect the adoption of this standard to have a material effect on its financial position or results of operations.

During the second quarter of 2009, we adopted three related standards of accounting guidance as issued by the FASB. The accounting guidance sets forth rules related to determining the fair value of financial assets and financial liabilities when the activity levels have significantly decreased in relation to the normal market, guidance related to the determination of other-than-temporary impairments and interim disclosure requirements for the fair value of financial instruments. The adoption of the three standards of accounting guidance did not have a material impact on our consolidated financial statements.

On January 1, 2009, we adopted new accounting guidance for business combinations as issued by the FASB. The new accounting guidance establishes principles and requirements for how an acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, liabilities assumed, and any noncontrolling interests in the acquiree, as well as the goodwill acquired. Significant changes from previous guidance resulting from this new guidance include the expansion of the definitions of a business and a business combination. For all business combinations (whether partial, full or step acquisitions), the acquirer will record 100% of all assets and liabilities of the acquired business, including goodwill, generally at their fair values. Contingent consideration will be recognized at its fair value on the acquisition date. For certain arrangements, changes in fair value will be recognized in earnings until settlement, and acquisition-related transaction and restructuring costs will be expensed rather than treated as part of the cost of the acquisition. The new accounting guidance also establishes disclosure requirements to enable users to evaluate the nature and financial effects of the business combination. The adoption of this accounting guidance did not have a material impact on our consolidated financial statements.

On January 1, 2009, we adopted new accounting guidance for the determination of the useful life of intangible assets as issued by the FASB. The new guidance amends the factors that should be considered in developing the renewal or extension assumptions used to determine the useful life of a recognized intangible asset. The new guidance also requires expanded disclosure regarding the determination of intangible asset useful lives. The adoption of this accounting guidance did not have a material impact on our consolidated financial statements.

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 September 30, 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 $633,000 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 of Actuate Japan and all investments in the subsidiary are eliminated in consolidation. Through September 30, 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 its 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.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

3. Fair Value Measurements of Financial Assets and Liabilities

In April 2009, the FASB issued new accounting guidance related to interim disclosures about the fair values of financial instruments. This guidance requires disclosures about the fair value of financial instruments whenever a public company issues financial information for interim reporting periods. For certain of our financial instruments, including cash and cash equivalents, short-term investments, accounts receivable, accounts payable, and other current liabilities the carrying amounts approximate their fair value due to the relatively short maturity of these balances. We also believe that the carrying value of our note payable approximates fair value as it s been less than one year since we have entered into this Credit Agreement and that the interest rate on this note is based on a floating market rate. The Company adopted this guidance during the second quarter of fiscal 2009.

The Company has investments that are valued in accordance with the provisions of the authoritative guidance that addresses fair value measurements. This guidance 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 September 30, 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	$ 4,971	$ 4,971	$	$
Term deposits	10,607	10,607		
Commercial paper	8,995		8,995	
Corporate bonds	12,575		12,575	
Federal and municipal obligations	4,213		4,213	
Auction Rate Securities (ARS)	14,560			14,560
Put option	1,902			1,902
	$ 57,823	$ 15,578	$ 25,783	$ 16,462

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

As of September 30, 2009, the Company had approximately $16.4 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. 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.

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 its ARS portfolio at the $16.4 million 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. At September 30, 2009, the Company has valued the Put Option at the approximate present value of the difference between the fair market value and the par value of the ARS.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

At September 30, 2009, the Company has classified the ARS and the related Put Option as current investments on its Consolidated Balance Sheet. This classification was based on the intent and ability of the Company to sell the ARS back to UBS as soon as the Put Option allows, which is currently expected to be June 30, 2010.

The Company has no reason to believe that any of the underlying issuers of its ARS are presently at risk of default. Through September 30, 2009, the Company has continued to receive interest payments on the ARS in accordance with their terms. Currently, interest is being earned 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 Company believes that it will ultimately be able to liquidate its ARS related investments without significant loss primarily due to the collateral securing the ARS and the legal settlement it has entered into with UBS. However, it could take until final maturity of the ARS (up to 38 years) to realize the investments par value.

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 September 30, 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 September 30, 2009 the Company determined there was a decline in the fair value of its ARS investments of approximately $2.6 million in fiscal 2008, and approximately $678,000 improvement in the fair value of the ARS during the first nine months of fiscal 2009. Therefore, the cumulative net impairment of the ARS investments totaled approximately $1.9 million as of September 30, 2009. This determination was largely based on the fact that the Company reclassified the ARS investments from available for sale to trading status. This reclassification was based on the fact that Actuate fully intends to sell the ARS as soon as the Put Option settlement agreement allows. 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 the quarter ended 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 authoritative guidance issued by the FASB on accounting for and presenting impairment losses on securities are effective for Actuate beginning with the second quarter of fiscal 2009. However, the impact on Actuate this quarter is not significant.

In the second quarter of 2009, the FASB issued the authoritative guidance on determining fair value when market activity has decreased. This guidance was effective for Actuate beginning with the second quarter of fiscal 2009. The value of our non-ARS investments that are valued using Level 2 inputs are based on a quoted price from a market that has not experienced a significant decrease in activity. Therefore, the Company will continue using Level 2 inputs from orderly transaction in our fair value measurement of the Level 2 assets.

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 nine months of fiscal year 2009 (in thousands).

	Fair Value Measurements Using Significant Unobservable Inputs (Level 3) ARS and Put option
Balance at December 31, 2008	$ 16,391
Recorded net gain on ARS included in earnings	678
Net loss on fair value of Put option included in earnings	(607)

Balance at September 30, 2009	$	16,462

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)	Realized Changes in fair value	Estimated Fair Value
Balance at September 30, 2009					
Classified as cash and cash equivalents:					
Cash	$ 12,451	$	$	$	$ 12,451
Term deposits	10,607				10,607
Money market funds	4,971				4,971
	28,029				28,029
Classified as short-term investments:					
Commercial paper	8,996		(1)		8,995
Corporate bonds	12,462	115	(2)		12,575
Federal and municipal obligations	4,200	13			4,213
ARS	16,475			(1,915)	14,560
Put option				1,902	1,902
	42,133	128	(3)	(13)	42,245
Total	$ 70,162	$ 128	$ (3)	$ (13)	$ 70,274

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

	Cost	Gross Unrealized Gains	Gross Unrealized (Losses)	Realized Changes in fair value	Estimated Fair Value
Balance at December 31, 2008					
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			(84)	16,391
Total	$ 58,485	$ 64	$ (24)	$ (84)	$ 58,441

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.

Short-term investments, other than ARS, are 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 September 30, 2009, Actuate has classified all of its securities that mature beyond 90 days 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 fiscal year 2009, we incurred $83,000 in legal fees related to a previous restructuring which involved the terminations of former employees in one of our European subsidiaries. We also incurred approximately $28,000 in additional charges related to prior facility closures in North America. These 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. The restructuring charges incurred during the first half of the year were accounted for in accordance with the FASB s guidance on accounting for costs associated with exit or disposal activities which require 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.

During fiscal year 2009, we also incurred approximately $300,000 in costs consisting of severance and related benefits when we initiated a global restructuring of our sales force to size the operation to meet the expected business and economic environment for our products. This restructuring resulted in workforce reductions of 12 total personnel and was concentrated mainly in Europe and North America across all levels of the sales organization. We also recorded a $171,000 reduction to our idle facilities reserves which included estimated sublease income for the

Vienna, Virginia facility and true-ups of operating expenses associated with our idle South San Francisco facility. 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.

The following table summarizes the restructuring accrual activity during the nine months ended September 30, 2009 (in thousands):

	Severance & Benefits	Facility Related	Total
Balance at December 31, 2008	$ 561	$ 5,737	$ 6,298
Restructuring charges	383	(143)	240
Cash payments, net of rents collected on sublease for Q1	(231)	(837)	(1,068)
Cash payments, net of rents collected on sublease for Q2	(45)	(722)	(767)
Cash payments, net of rents collected on sublease for Q3	(286)	(756)	(1,042)
Change in estimate	(2)	(1)	(3)
Balance at September 30, 2009	380	3,278	3,658
Less: current portion	(380)	(2,394)	(2,774)
Long-term balance at September 30, 2009	$	$ 884	$ 884

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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 September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenues:				
North America	$ 23,330	$ 24,995	$ 68,912	$ 69,640
Europe	5,216	7,654	16,761	24,639
Asia Pacific and others	805	1,032	2,475	3,523
	$ 29,351	$ 33,681	$ 88,148	$ 97,802

As of September 30, 2009, we operated solely in one segment, which is the development, marketing and support of the Actuate Enterprise Reporting Application Platform. There was no single customer that accounted for more than 10% of total revenues in either the three months ended September 30, 2009 or 2008. A significant portion of the Company s revenues have historically been derived from customers in the financial services industry.

6. Goodwill and Other Purchased Intangible Assets

Goodwill

In accordance with the authoritative guidance issued by the FASB on accounting and reporting for acquired goodwill and other intangible assets, 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 September 30, 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):

	September 30, 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
Customer list	$ 14,000	$ (13,150)	$ 850	$ 14,000	$ (12,640)	$	$ 1,360
Purchased technologies	8,002	(7,727)	275	8,430	(7,562)	(428)	440
	$ 22,002	$ (20,877)	$ 1,125	$ 22,430	$ (20,202)	$ (428)	$ 1,800

Amortization expense of purchased technology and other intangible assets was approximately $225,000 and $382,000 for the quarters ended September 30, 2009 and 2008, respectively. Of this total, approximately $55,000 and $145,000 was related to the amortization of purchased technology. Amortization expense of purchased intangible assets was approximately $675,000 and $1.1 million for the nine months ended September 30, 2009 and 2008, respectively. Of this total, approximately $165,000 and $437,000 was related to the amortization of purchased technologies. Amortization of purchased technologies is included in cost of license fees in the accompanying condensed consolidated statements of income. The expected remaining annual amortization expense is summarized as follows (in thousands):

Fiscal Year	**Purchased Technology and Intangibles**
2009 (remainder of year)	$ 225
2010	900
	$ 1,125

ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

7. Commitments and 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 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 September 30, 2009, the Company owed $30.0 million on the credit facility. There are no minimum pay-down requirements under the terms of this credit facility so long as the Company remains in compliance with the terms of the Credit Agreement. 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 September 30, 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 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 amortized within one year or non-current assets if amortized beyond one year in the Company s Consolidated Balance Sheet at September 30, 2009.

As of September 30, 2009, the remaining balance available under the revolving credit facility was 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 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. As of September 30, 2009, the Company was able to meet the 80% test as well as the $10 million minimal cash threshold and was therefore not subject to the income or the capital expenditures covenants. The Company is required to make interest payments and pay an unused commitment fee on a monthly basis. The Company incurred approximately $850,000 of interest expense associated with the credit facility during the first nine months of fiscal year 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;

- 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 September 30, 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.

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(Unaudited)

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 September 1, 2007, the Company entered into a five year sublease agreement with a third party 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 September 30, 2009, the deferred rent liability balance totaled approximately $1.0 million and this balance declines through 2012 when contractual cash payments exceed the straight-line lease expense. Of this total deferred rent liability balance, approximately $308,000 was classified under the current accrued liabilities section of our consolidated balance sheet with the remaining portion of approximately $692,000 classified under other long term liabilities section of our consolidated balance sheet at September 30, 2009. 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 being entirely subleased. Actuate also leases office facilities in various locations in the United States and abroad. All facilities are leased under operating leases.

In May 2001, Actuate issued a letter of credit in the amount of $1.6 million to secure the lease of one of its facilities in the South San Francisco location. The lease agreement stipulated that absent an event of default, Actuate had the right to annually reduce the amount of this letter of credit by approximately $229,000 over a seven year period beginning in May 2002. Accordingly, in May 2009, Actuate exercised its right under the terms of the lease agreement and reduced the final remaining balance of approximately $229,000 on this letter of credit. In prior periods, Actuate pledged $426,000 of restricted cash as collateral for standby letters of credit that guarantee its contractual obligations relating to its corporate headquarter facilities located at the Bridgepointe Campus in San Mateo, California. This restricted cash remain classified as Other Assets in the accompanying Consolidated Balance Sheet as of September 30, 2009.

Stock Option Plans

The weighted average grant date fair value of options granted during the quarter ended September 30, 2009 was $2.74 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 September 30, 2009 was $4.1 million.

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number of Shares	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number of Shares	Weighted-Average Exercise Price
$0.78-$1.49	3,403,417	3.42 years	$ 1.49	3,403,417	$ 1.49
$1.56-$3.36	2,434,370	5.06 years	$ 2.73	2,335,719	$ 2.72
$3.37-$3.75	3,722,577	6.90 years	$ 3.60	1,853,035	$ 3.63
$3.77-$5.29	3,691,823	6.14 years	$ 4.68	2,356,877	$ 4.76
$5.30-$7.86	2,455,531	7.78 years	$ 6.20	1,135,644	$ 6.19
$8.03-$11.44	176,000	1.72 years	$ 8.69	171,666	$ 8.70
$12.11-$17.50	120,000	1.41 years	$ 15.70	120,000	$ 15.70
$31.19-$31.19	80,000	.41 years	$ 31.19	80,000	$ 31.19

$0.78-$31.19	16,083,718	5.71 years	$	3.95	11,456,358	$ 3.69

	September 30, 2009	September 30, 2008
Options Outstanding Vested and Expected to Vest		
Vested and expected to vest	15,895,684	18,798,309
Aggregate intrinsic value (in thousands)	$ 33,879	$ 12,396
Weighted average exercise price per share	$ 3.94	$ 3.74
Weighted average remaining contractual term (in years)	5.69	5.43
Options Exercisable		
Options currently exercisable	11,456,358	14,295,662
Aggregate intrinsic value of currently exercisable options (in thousands)	$ 28,062	$ 12,182
Weighted average exercise price per share	$ 3.69	$ 3.24
Weighted average remaining contractual term (in years)	4.75	4.40

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

As of September 30, 2009, the number of shares reserved for future grants under all option plans was 15,723,557. The number of shares available for future purchase under the ESPP Plan was 1,924,849.

8. Deferred Revenue

Deferred revenue consists of the following (in thousands):

	September 30, 2009	December 31, 2008
Maintenance and support	$ 34,666	$ 38,070
Other	2,885	5,302
	37,551	43,372
Less: current portion	(35,937)	(40,900)
Long-term deferred revenue	$ 1,614	$ 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 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 - the people behind BIRT (Business Intelligence and Reporting Tools) - founded and continues to co-lead the Eclipse BIRT open source project. BIRT is the premier development environment for Rich Information Applications that presents data in compelling and interactive ways via the web on any device. Actuate and its people are dedicated to making BIRT the best environment for our customers to develop Web 2.0/Rich Internet Applications (RIAs) that drive revenue through higher customer satisfaction/loyalty and improved operational performance. The people of Actuate continually participate in and provide resources for the vibrant open source community that has emerged around BIRT. Actuate offers value-add BIRT products and services that speed the development process and bring additional functionality, interactivity and enterprise scalability to BIRT-based Rich Information Applications. 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. 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 macro-economic environment, which is primarily characterized by diminished product demand. As a result of this downturn, some of our customers may face financial challenges for the remainder of fiscal 2009. It is unclear when the macro-economic 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 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 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. 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.

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	Three Months Ended September 30, (in thousands except per share data) 2009	2008	$ Change	% Change
Financial summary				
Total revenues	$ 29,351	$ 33,681	$ (4,330)	(13)%
Total operating expenses	25,065	30,238	(5,173)	(17)%
Income from operations	4,286	3,443	843	25%
Operating margins	15%	10%	5%	50%
Net income	$ 3,139	$ 3,105	$ 34	1%
Diluted net income per share	$ 0.06	$ 0.05	$ 0.01	20%
Shares used in diluted per share calculation	50,484	65,397	(14,913)	(23)%

The overall decrease in total revenues was mainly driven by lower license sales which decreased by 14% or approximately $1.4 million over the same period last year as we continue facing a challenging macro-economic environment, especially in the international markets. These negative conditions have forced customers to either delay purchases or find solutions to increase optimal efficiencies using exiting infrastructure server environments. During the third quarter of fiscal 2009, we experienced a 57% or approximately $1.9 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.

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. We implemented a second restructuring in the third quarter of 2009 which resulted in the elimination of 12 positions held by Actuate employees primarily in North America and Europe. These cost cutting measures combined with operational discipline have primarily been the force behind the 17% or $5.2 million reductions in operating expenses in the third quarter of fiscal 2009 compared to the third quarter of fiscal 2008. Consequently, our operating margins have improved from 10% in the third quarter of fiscal 2008 to 15% in the third quarter of fiscal 2009. The increase in the fully diluted earnings per share in the third quarter of 2009 over the same period last year was primarily attributed to the reductions in our operating expenses as discussed above and the 23% decrease in our share count. This decrease in share count was mainly due to the tender offer completed in December of 2008 resulting in the repurchase of approximately 17.1 million shares, and approximately 1.8 million additional shares repurchased in the third quarter of fiscal 2009.

As a result of fluctuations in foreign currency exchange rates, our total revenues for the third quarter of this year compared to the third quarter of last year were negatively impacted by approximately $300,000 while our operating expenses were positively impacted by approximately $230,000.

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 nine months of fiscal 2009. If this trend continues, 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 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, Rich Internet Applications (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 these markets will be vigorous in the near future.

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For remainder of fiscal year 2009, we will continue to pursue the strategic initiatives to improve revenue and earnings growth that we began in fiscal year 2004 as well as an initiative related to Performance Management, which we introduced in fiscal 2008. 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. 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 Rich Information Application platform to provide capabilities for distributing accountability throughout the enterprise.

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.

As of September 30, 2009, the Company had approximately $16.4 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. 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. 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 its ARS portfolio at the $16.4 million 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). Readers should refer to Note 3 of these consolidated financial statements for additional information related to the Company s ARS investments and the rights offering by UBS.

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.

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Results of Operations

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

	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
Revenues:				
License fees	29%	30%	29%	31%
Maintenance	66	60	65	58
Professional services and training	5	10	6	11
Total revenues	100	100	100	100
Costs and expenses:				
Cost of license fees	1	1	1	1
Cost of services	14	16	15	18
Sales and marketing	35	39	36	41
Research and development	17	16	17	17
General and administrative	17	15	17	15
Amortization of other purchased intangibles	1	1	1	1
Restructuring charges		2		1
Total costs and expenses	85	90	87	94
Income from operations	15	10	13	6
Interest income and other income/(expense), net	(2)	2		1
Interest expense	(1)		(1)	
Income before income taxes	12	12	12	7
Provision (benefit) for income taxes	1	3	2	(2)
Net income	11%	9%	10%	9%

Revenues

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

	Three Months Ended (In thousands) September 30, 2009	2008	Variance $ s	Variance %	Nine Months Ended (In thousands) September 30, 2009	2008	Variance $ s	Variance %
Revenues								
License fees	$ 8,620	$ 10,021	$ (1,401)	(14)%	$ 25,907	$ 29,920	$ (4,013)	(13)%
Maintenance	19,340	20,406	(1,066)	(5)%	56,889	56,791	98	%
Professional services and training	1,391	3,254	(1,863)	(57)%	5,352	11,091	(5,739)	(52)%
Total Revenues	**$ 29,351**	**$ 33,681**	**$ (4,330)**	**(13)%**	**$ 88,148**	**$ 97,802**	**$ (9,654)**	**(10)%**

% of Revenue				
License fees	29%	30%	29%	31%
Maintenance	66%	60%	65%	58%
Professional services and training	5%	10%	6%	11%
Total Revenues	**100%**	**100%**	**100%**	**100%**

Our revenues are derived from software license fees and services, which include software maintenance and support, consulting and training. The decrease in our license revenues was primarily due to unfavorable macro-economic conditions that continue to adversely impact the financial services industry; a key component of Actuate s customer portfolio. We also experienced a similar deterioration in revenues attributed to our professional services business, which decreased during the third quarter of fiscal 2009 compared to the same period last year. This decrease 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. Our maintenance and support revenues have also declined from the prior year quarter. This decrease is primarily driven by our European entities, where a one-time back maintenance billing in the third quarter of fiscal 2008 coupled with declines in license revenues have consequently resulted in a corresponding decrease in maintenance revenues.

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Revenues outside of North America decreased by 31% from $8.7 million in the third quarter of fiscal year 2008 to approximately $6.0 million in the third quarter of fiscal year 2009. These international revenues represented 21% of our total revenues versus 26% in the same period last year. This decrease in international revenues as a percentage of total revenues in the third quarter of fiscal 2009 compared to the same period last year was primarily due to challenging macro-economic environments in Europe and Asia. Approximately $300,000 of the decrease in international revenues was due to the unfavorable impact of exchange rate fluctuations on revenue transactions denominated in foreign currencies.

For the first nine months of fiscal year 2009, the changes and the underlying reasons for those changes in the various components of our revenues were similar to those experienced during the quarter as noted above. Revenues outside of North America decreased by 32% from $28.2 million in the first nine months of fiscal year 2008 to approximately $19.2 million in the first nine months of fiscal year 2009. The international revenues represented 22% of our total revenues versus 29% in the same period last year. Approximately $1.8 million of the decrease in international revenues was due to the unfavorable impact of exchange rate fluctuations on revenue transactions denominated in foreign currencies.

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

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
License Revenues								
North America	$ 7,424	$ 8,201	$ (777)	(10)%	$ 21,112	$ 21,735	$ (623)	(3)%
Europe	1,028	1,486	(458)	(31)%	4,293	6,710	(2,417)	(36)%
Asia Pacific	168	334	(166)	(50)%	502	1,475	(973)	(66)%
Total License	**$ 8,620**	**$ 10,021**	**$ (1,401)**	**(14)%**	**$ 25,907**	**$ 29,920**	**$ (4,013)**	**(13)%**
% of total revenue	29%	30%			29%	31%		

License fees. The 14% decrease in license revenues for the third quarter of fiscal year 2009 over the same period in the prior year was primarily due to weak macro economic conditions that continue to adversely impact the financial services industry; a key component of Actuate s customer portfolio. We experienced most of this weakness in our international regions where software revenues declined by 34% or approximately $600,000 during the third quarter of 2009 when compared to the third quarter of fiscal 2008. During the third quarter of fiscal 2009, we closed 55 transactions in excess of $100,000 and two transactions in excess of $1.0 million. This compared to 60 transactions in excess of $100,000 and two transactions in excess of $1.0 million in the third quarter of fiscal 2008. One of these transactions accounted for over 10% of our total reported license revenues for the third quarter of fiscal 2009. The number of orders greater than $1.0 million has historically ranged from none to three per quarter. We do not expect to rely on any one customer for our future business.

The 13% decrease in license revenues for the nine months ended September 30, 2009 was primarily attributed to weak macro economic conditions in North America and Europe. As a result, our license sales declined by approximately $4.0 million over the same period last year.

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

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
Services Revenues								
Maintenance and support	$ 19,340	$ 20,406	$ (1,066)	(5)%	$ 56,889	$ 56,791	$ 98	%
Professional services	1,391	3,254	(1,863)	(57)%	5,352	11,091	(5,739)	(52)%
Total Services	**$ 20,731**	**$ 23,660**	**$ (2,929)**	**(12)%**	**$ 62,241**	**$ 67,882**	**$ (5,641)**	**(8)%**

% of Services Revenue				
Maintenance and support	93%	86%	91%	84%
Professional services	7%	14%	9%	16%
Total Services	**100%**	**100%**	**100%**	**100%**

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Services. Services revenue is comprised of maintenance and support, professional services, and training. The 12% decrease in services revenues for the quarter versus the prior year was driven primarily by a 57% 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.

By region, North America accounted for approximately 77% of the total services revenue in the third 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 71% of the total services revenue while the Europe and Asia Pacific regions accounted for 26% and 3% of the total services revenues, respectively.

Services margins improved from 78% in the third quarter of fiscal year 2008, to 80% for the third quarter of fiscal year 2009. This improvement was mostly the result of the shift in product mix, which reflected a higher percentage of maintenance and support revenue in the third quarter of fiscal 2009 than in the third quarter of fiscal 2008. Maintenance and support typically carries a higher margin than professional services. Also, the lower professional services revenues resulted in cost reductions in our professional services group that were implemented in the second and the third quarters of fiscal 2008.

The 8% decrease in services revenues for the nine months ended September 30, 2009 was primarily attributed to a 52% decrease in our professional services revenues. This sharp decrease in revenues was mostly due to the macro-economic challenges that we faced starting in fiscal 2008 and have continued through fiscal 2009. Due to this challenging environment, as mentioned above, 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. Our maintenance growth remained unchanged for the first nine months of fiscal 2009 compared to the same period last year.

By region, North America accounted for approximately 77% of the total services revenue in the first nine months 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 71% of the total services revenue while the Europe and Asia Pacific regions accounted for 26% and 3% of the total services revenues, respectively.

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

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	**2008**	**Variance $ s**	**Variance %**	**2009**	**2008**	**Variance $ s**	**Variance %**
Services Revenues								
North America	$ 15,906	$ 16,794	$ (888)	(5)%	$ 47,800	$ 47,905	$ (105)	%
Europe	4,188	6,168	(1,980)	(32)%	12,468	17,929	(5,461)	(31)%
Asia Pacific	637	698	(61)	(9)%	1,973	2,048	(75)	(4)%
Total Services	**$ 20,731**	**$ 23,660**	**$ (2,929)**	**(12)%**	**$ 62,241**	**$ 67,882**	**$ (5,641)**	**(8)%**
% of total revenue	71%	70%			71%	69%		

Costs and Expenses

Cost of license fees

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	**2008**	**Variance $ s**	**Variance %**	**2009**	**2008**	**Variance $ s**	**Variance %**
Cost of license fees	$ 267	$ 350	$ (83)	(24)%	$ 703	$ 1,066	$ (363)	(34)%
% of license revenue	3%	3%			3%	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 third quarter of fiscal year 2009 and the first nine months of fiscal 2009, compared to the corresponding periods 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.

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Cost of services

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
Cost of services	$ 4,185	$ 5,299	$ (1,114)	(21)%	$ 13,718	$ 17,861	$ (4,143)	(23)%
% of services revenue	20%	22%			22%	26%		

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 decrease in cost of services for the third quarter of fiscal year 2009, compared to the corresponding period in the prior year, was primarily due to the decrease in consulting revenues as demand for Actuate s professional services engagements continued to decrease during the quarter. In response to this decrease in services engagement opportunities, we reduced our cost structure during the second half of fiscal 2008 and continued these reductions throughout fiscal 2009. Consequently, we reduced our professional consulting headcount by approximately 31% or 15 employees from 48 at the end of third quarter of fiscal 2008 to 33 employees at end of the third quarter of fiscal 2009. As a result of these reductions, employee compensation and travel costs decreased by approximately $320,000 during the third quarter of this year. Third party consulting fees also decreased by approximately $260,000 in the third quarter of 2009 compared to the same period in the prior year. This was a direct result of an intentional reduction in the use of external contractors to staff engagements. Finally, during the third quarter of fiscal 2009 internal costs allocated to the services group decreased by approximately $430,000, primarily due to a 57% decrease in consulting revenues and reduced headcount in the services group.

For the nine months ended September 30, 2009, we experienced reductions in similar categories of costs as we did during the quarter. Compensation and employee travel related expenses decreased by approximately $1.1 million due to slowing revenues and reduced consulting headcount. Headcount dropped from 48 employees at the end of the third quarter of fiscal 2008 to 33 employees at the end of the third quarter of fiscal 2009. Reduced consulting engagements also impacted our third party consulting fees by approximately $1.4 million while internal costs allocated to the services group decreased by approximately $1.4 million due mainly to a 52% decrease in consulting revenues and decreases 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 20% to 25% of total services revenues for the remainder of fiscal year 2009.

Sales and marketing

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
Sales and marketing	$ 10,231	$ 13,168	$ (2,937)	(22)%	$ 31,433	$ 39,982	$ (8,549)	(21)%
% of total revenue	35%	39%			36%	41%		

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 third quarter of fiscal year 2009 was primarily due to reductions in employee related expenses. Salaries, sales commissions, and stock-based compensation and employee travel combined to account for $1.9 million of the decrease in third quarter 2009 expenses. These reductions were mostly due to the drop in license revenues, which translated into lower sales commissions. Our sales and marketing headcount also decreased by 3%, or 5 employees, from 159 at the end the third quarter of fiscal 2008 to 154 at the end of the third quarter of fiscal 2009. Recruiting and marketing programs decreased by approximately $1.1 million in the third quarter of 2009 as compared to the same period last year as we combined our International User Conference and our annual sales kick-off events into one. These reductions in cost were offset by the internal allocation of sales costs to our services department, which was lower in the third quarter of fiscal 2009 than in the prior year.

For the nine months ended September 30, 2009, we experienced reductions in similar categories of costs as we did during the quarter primarily due to reductions to our sales headcount and decreased license bookings, that resulted in decrease compensation, travel and related costs of $6.5 million. We also experienced reductions in corporate events and employee training related costs of

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approximately $600,000 compared to the corresponding period last year as we combined our International User Conference and our annual sales kick-off events into one. We did experience other cost reductions in many categories within sales and marketing. These reductions in cost were partially 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) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
Research and development	$ 4,998	$ 5,459	$ (461)	(8)%	$ 15,256	$ 16,860	$ (1,604)	(10)%
% of total revenue	17%	16%			17%	17%		

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 third quarter and the nine months of fiscal year 2009 was primarily attributed to employee compensation and related costs. Total worldwide research and development headcount decreased by 10 employees from 160 at the end the third quarter of fiscal 2008 to 150 at the end of the third quarter of fiscal 2009. Also, during fiscal 2008, we shifted headcount away from North America where employee costs are higher and into China, where employee costs are significantly lower. 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) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
General and administrative	$ 5,085	$ 5,053	$ 32	1%	$ 14,717	$ 14,457	$ 260	2%
% of total revenue	17%	15%			17%	15%		

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 for the third quarter of fiscal year 2009 was primarily due to approximately $900,000 increase in legal fees resulting from contract compliance matters pursued during the quarter. These increases were offset by lower employee compensation and related costs of $680,000 due to a 6% reduction in our administrative headcount. We also experienced a reduction in audit and professional advisory fees of approximately $160,000.

For the nine months ended September 30, 2009 the increase in general and administrative expenses was primarily due to increased legal fees of approximately $1.5 million and increased audit and tax advisory fees of approximately $170,000. 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 nine months of fiscal 2009 compared to the same period last year while the increase in the legal fees were due mostly to contract compliance matters pursued during the year. These increases were partially offset by a reduction of approximately $970,000 in employee compensation, benefits and recruiting fees due to reduced headcount. We also benefited from a business tax refund of approximately $180,000 in China and reduction in bad debt charges of approximately $200,000 due to improved collections of our outstanding receivables during the year.

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We expect our general and administrative expenses to be in the range of 17% to 18% of total revenues for the remainder of fiscal year 2009 as a result of legal fees associated with contract compliance matters.

Restructuring charges

	Three Months Ended (In thousands) September 30, 2009	2008	Variance $ s	Variance %	Nine Months Ended (In thousands) September 30, 2009	2008	Variance $ s	Variance %
Restructuring charges	$ 129	$ 672	$ (543)	(81)%	$ 240	$ 1,075	$ (835)	(78)%
% of total revenue	%	2%			%	1%		

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.

The restructuring costs for the third quarter of fiscal 2009 consist primarily of severance payments, payroll taxes and extended medical benefits directly resulting from a reduction in force. During the third quarter of fiscal 2009, we announced and began to implement restructuring actions that resulted in aggregate charges of $300,000. As of September 30, 2009, we eliminated 12 positions worldwide, across all levels within the sales organization as a result of this restructuring. During the third quarter of fiscal 2009 we also recorded a $143,000 reduction to our idle facilities reserves which included estimated sublease income for the Vienna, Virginia facility and true-ups of operating expenses associated with the South San Francisco facility. These charges were accounted for in accordance with Financial Accounting Standards associated with employee termination and facilities 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.

In addition to the charges incurred above, in the first half of fiscal 2009 we incurred $83,000 in legal fees related to a previous restructuring which involved the terminations of former employees in one of our European subsidiaries. We also incurred approximately $28,000 in additional charges related to prior facility closures in North America. These 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.

Interest and other income, net

	Three Months Ended (In thousands) September 30, 2009	2008	Variance $ s	Variance %	Nine Months Ended (In thousands) September 30, 2009	2008	Variance $ s	Variance %
Interest income and other income/(expense), net	$ 185	$ 549	$ (364)	(66)%	$ 740	$ 1,950	$ (1,210)	(62)%
Foreign exchange gain/(loss)	(590)	137	(727)	(530)%	(561)	(1,186)	625	(53)%
Total interest and other income, net	$ (405)	$ 686	$ (1,091)	(159)%	$ 179	$ 764	$ (585)	(77)%
Interest expense	(347)	(3)	(344)	N/A	(1,057)	(3)	(1,054)	N/A

Interest income for the third quarter of fiscal 2009 decreased due to an overall decrease in interest rates and lower average cash balances. The rate of return on our investment portfolio dropped significantly in the third quarter of 2009. In addition to the decrease in the rate of return on our investments, our cash and investment balances decreased by approximately $11.0 million mostly due to the share buyback in the third quarter of 2009 which totaled $10.0 million and the tender offer that was completed 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.

During the third quarter and the nine months of fiscal 2009, we experienced foreign exchange losses due primarily to the devaluation of the British Pound, the Euro and 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 European operations.

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For the third quarter and the first nine months of fiscal year 2009, we recorded interest expense totaling approximately $277,000 and $848,000, respectively, on the utilized portion of our credit facility with Wells Fargo Financial (WFF), which was signed in the fourth quarter of fiscal 2008. During the third quarter and the first nine months of fiscal year 2009, we also recorded unused line fees and amortization of debt issuance costs of approximately $70,000, and $209,000, respectively.

Provision for income taxes

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2009	2008	Variance $ s	Variance %	2009	2008	Variance $ s	Variance %
Provision (benefit) for income taxes	$ 395	$ 1,021	$ (626)	(61)%	$ 1,951	$ (2,356)	$ 4,307	183%
% of total revenue	1%	3%			2%	(2)%		

For the three months ended September 30, 2009, we recorded an income tax provision of approximately $395,000, as compared to an income tax provision of approximately $1.0 million for the same period of fiscal year 2008. The decrease in the income tax provision for the third quarter of fiscal year 2009 as compared to the third quarter of fiscal year 2008 is primarily due to the reversal of a reserve related to an uncertain tax position of approximately $965,000. Without this benefit the tax provision for the quarter would have been higher than the same period in 2008 due to higher domestic pretax net income.

For the nine months ended September 30, 2009, we recorded an income tax provision of $1.9 million as compared to an income tax benefit of $2.3 million for the same period of fiscal year 2008. The increase in the 2009 income tax provision is due to higher domestic pretax net income. The September 30, 2009 tax provision was also impacted by discrete items with a beneficial net impact of $1.6 million. A majority of this net benefit included adjustments in the third quarter for the reversal of a reserve related to an uncertain tax position and in the second quarter changes in judgment of whether certain foreign deferred tax assets would be realized. The tax benefit of $3.4 million recognized in the first quarter of fiscal 2008 was in relation to the deemed liquidation for U.S. income tax purposes of one of our subsidiaries.

During the three months ended September 30, 2009, the Company reduced its total unrecognized tax benefits by approximately $965,000 for foreign withholding taxes due to settlement of an intercompany item. 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 twelve months.

Liquidity and Capital Resources

	As of September 30, 2009	As of December 31, 2008	Change $	Change %
Cash, cash equivalents and investments	$ 70,274	$ 58,441	$ 11,833	20%
Working capital	$ 49,587	$ 20,701	$ 28,886	140%
Note payable	$ 30,000	$ 30,000	$	%
Stockholders equity	$ 71,031	$ 55,664	$ 15,367	28%

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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 stock 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 support agreements. Payments from customers for software license 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 nine 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 decreased by 14 days from 78 days at December 31, 2008 to 64 days at September 30, 2009. The decrease is primarily due to the volume of billings made in the last month of the quarter. Due mainly to seasonality, the billings made in December of 2008 were significantly higher than those made in September of 2009. This resulted in a higher accounts receivable balance at December 31, 2008 and consequently, a higher DSO.

Cash flows from investing activities: The changes in cash flows from investing activities primarily relate to 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 used in investing activities was $9.4 million in the first nine months of fiscal 2009 compared to cash provided of $8.4 million for the same period last year. The increase in cash used primarily relates to the timing of purchases and maturities of marketable securities.

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 provided by financing activities was $258,000 in the first nine months of fiscal 2009 compared to $7.7 million used during the same period last year. This change was primarily due to lower stock repurchases, as we did not participate in any share buy back programs until the third quarter of fiscal 2009 during which we repurchased approximately 1.8 million shares of common stock in the open market for $10 million. During the same period last year we repurchase approximately 2.6 million shares of common stock in the open market for $12.7 million. These cash outflows during the nine months of fiscal 2009 were partially offset by increased proceeds from the exercise of employee stock options and corresponding tax benefits associated with such exercises.

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 projects. 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 September 30, 2009, we owed $30.0 million on the credit facility. There are no minimum pay-down requirements under the terms of this credit facility so long as the Company remains in compliance with the terms of the Credit Agreement. Readers should refer to Note 7 of these consolidated financial statements for additional information related to the Company s revolving line of credit.

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 condition.

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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, 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 its ARS portfolio at the $16.4 million par value, at any time during a two-year sale period beginning June 30, 2010. Readers should refer to Note 3 of these consolidated financial statements for additional information related to the Company s ARS investments and the rights offering by UBS.

At September 30, 2009, the Company has classified the ARS and the related Put Option as current investments on its Consolidated Balance Sheet. This classification was based on the intent and ability of the Company to sell the ARS back to UBS as soon as the Put Option allows, which is currently expected to be June 30, 2010.

We hold our cash, cash equivalents and investments primarily in the United States, Switzerland, and Singapore. As of September 30, 2009, we held an aggregate of approximately $51 million in cash, cash equivalents and short-term investments in the United States and an aggregate of $19.3 million in foreign accounts. Funds in foreign accounts are primarily generated from revenue outside North America and are used to fund oversea 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.

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. Readers should refer to Note 7 of these consolidated financial statements for additional information related to the Company s revolving line of credit.

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.

In May 2001, Actuate issued a letter of credit in the amount of $1.6 million to secure the lease of one of its facilities in the South San Francisco location. The lease agreement stipulated that absent an event of default, Actuate had the right to annually reduce the amount of this letter of credit by approximately $229,000 over a seven year period beginning in May 2002. Accordingly, in May 2009, Actuate exercised its right under the terms of the lease agreement and reduced the final remaining balance of approximately $229,000 on this letter of credit. In prior periods, Actuate pledged $426,000 of restricted cash as collateral for standby letters of credit that guarantee its contractual obligations relating to its corporate headquarter facilities located at the Bridgepointe Campus in San Mateo, California. This restricted cash remains classified as Other Assets in the accompanying Consolidated Balance Sheet, as of September 30, 2009.

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The following table summarizes our contractual obligations as of September 30, 2009 (in thousands):

	Total	Less than 1 year	1 3 years	3 5 years	Thereafter
Obligations:					
Operating leases (1)	$ 14,681	$ 6,301	$ 6,873	$ 1,298	$ 209
Purchase obligations (2)	3,861	3,757	89	10	5
Interest and loan obligations (3)	3,729	1,061	2,293	375	
Obligations for uncertain tax positions (4)	776		776		
Total	$ 23,047	$ 11,119	$ 10,031	$ 1,683	$ 214
Contractual sublease proceeds	$ 2,711	$ 1,647	$ 1,064	$	$

(1) Our future contractual obligations include minimum lease payments under operating leases at September 30, 2009. Of the remaining future minimum lease payments, approximately $5.4 million is included in restructuring liabilities on the Company s Consolidated Balance Sheet as of September 30, 2009. Contractual sublease proceeds associated with these minimum lease payments total approximately $2.7 million and are also included in restructuring liabilities on the Company s Consolidated Balance Sheet as of September 30, 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 September 30, 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 uncertain tax positions. See discussion on the authoritative guidance issued by the FASB on obligations for uncertain tax positions 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.

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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 nine months of fiscal years 2009 and 2008 we derived 22% and 29%, respectively, of our total revenues from sales outside of North America. We face exposure to market risk on these transactions 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. As exchange rates vary, transaction gains and losses may vary from expectations and adversely impact overall expected profitability. Our realized losses due to foreign exchange rate fluctuations was approximately $561,000 for the first nine months of fiscal 2009 compared to losses of approximately $1.2 million during the same period last year. During the first nine months of fiscal 2009, exchange rate fluctuations on foreign revenue transactions negatively impacted our total revenue growth by approximately $1.8 million when compared to the same period in the prior year.

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, other than our ARS investments, which have recently become illiquid (additional information regarding our ARS investment portfolio is detailed in Note 3 to the Consolidated Financial Statements for the period ended September 30, 2009). Due to the nature of our investments, we believe that there is limited interest rate 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 September 30, 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 September 30, 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 to only investment grade securities. We also limit 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. 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. Additional information regarding our ARS investment portfolio is detailed in Note 3 to the Consolidated Financial Statements for the period ended September 30, 2009.

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. The Company is not currently invested in any derivative securities.

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.

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Changes in Internal Controls

There were no changes in Actuate s internal control over financial reporting during the three months ended September 30, 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.

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;

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;
- 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.

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 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.

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 22%, 29% and 27% for the nine months 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.

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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 31%, 32%, and 29% of total revenues from license fees for the nine months 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.

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.

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.

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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. 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.

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

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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.

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.

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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.

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.

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THE COMPANY MAY BE SUBJECT TO PRODUCT LIABILITY CLAIMS.

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.

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;

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.

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 Company has also entered into change of control agreements with its executive officers, which agreements require payment to an executive upon termination of employment within 12 months after acquisition. 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 September 30, 2009, the Company had approximately $16.4 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. 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.

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 $16.4 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. At September 30, 2009 the Company has valued the Put Option at the present value of the difference between the fair market value and the par value of the ARS.

At September 30, 2009, the Company has classified the ARS and the related Put Option as current investments on its Consolidated Balance Sheet. This classification was based on the intent and ability of the Company to sell the ARS back to UBS as soon as the Put Option allows, which is currently expected to be June 30, 2010. In prior quarters, the ARS were classified as long-term investments because of the Company s inability to determine when its investments in the ARS would settle, and the fact that the exercisability date of the Put Option exceeded 365 days.

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The Company has no reason to believe that any of the underlying issuers of its ARS are presently at risk of default. Through September 30, 2009, the Company has continued to receive interest payments on the ARS in accordance with their terms. Currently, interest is being earned 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 Company believes that it will ultimately be able to liquidate its ARS related investments without significant loss primarily due to the collateral securing the ARS and the legal settlement it has entered into with UBS. However, it could take until final maturity of the ARS (up to 38 years) to realize the investments par value.

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 INDEBTEDNESS 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 September 30, 2009, our outstanding debt under the Credit Agreement was $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.

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.

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

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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 2. Unregistered Sales of Equity Securities and Use of Proceeds

The table below sets forth information regarding repurchases of Actuate common stock by Actuate during the three months ended September 30, 2009.

Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased	Average price paid per share	Total number of shares purchased as part of publicly announced programs (1)	Maximum dollar value of shares that may yet be purchased under the program (1)
Month #1				
July 1, 2009 through July 31, 2009	122,800	$ 5.39	122,800	
Month #2				
August 1, 2009 through August 31, 2009	1,641,393	$ 5.71	1,641,393	
Month #3				
September 1, 2009 through September 30, 2009				
Total	1,764,193	$ 5.69	1,764,193	

(1) On July 22, 2009, the Board of Directors approved an on-going extension of the Company s stock repurchase program, which was originally announced in September 2001 and has been extended from time to time. This extension authorized management to make additional repurchases. Under this repurchase program, the Company is authorized to repurchase Actuate common stock of up to an aggregate of $10.0 million per quarter. The Company intends to fund this program with existing cash and cash equivalents. The timing and amount of any repurchases will be determined by our management based on their evaluation of market conditions, regulatory considerations and other factors.

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

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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: November 6, 2009	By:	/s/ DANIEL A. GAUDREAU
		Daniel A. Gaudreau
		Senior Vice President,
		Operations and Chief Financial Officer
		(Principal Financial and Accounting Officer)