ACTUATE CORP
Form 10-Q
November 05, 2010
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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, 2010

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	**(I.R.S. Employer**
incorporation)	**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 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, 2010**
Common Stock, par value $.001 per share	44,930,303

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Actuate Corporation

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PART I FINANCIAL INFORMATION

PART II OTHER INFORMATION

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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, 2010	December 31, 2009
ASSETS		
Current assets:		
Cash and cash equivalents	$ 51,641	$ 53,173
Short-term investments	21,899	22,358
Accounts receivable, net of allowance of $669 and $749 at September 30, 2010 and December 31, 2009, respectively	20,590	33,176
Other current assets	5,780	5,667
Total current assets	99,910	114,374
Property and equipment, net	3,377	3,786
Goodwill	46,389	36,114
Other purchased intangibles, net	16,350	900
Non-current deferred tax assets	13,938	12,920
Other assets	1,545	1,670
	$ 181,509	$ 169,764
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 1,560	$ 1,372
Restructuring liabilities	2,035	2,796
Accrued compensation	5,888	4,918
Other accrued liabilities	4,204	5,330
Income tax payable	1,046	845
Deferred revenue	39,084	44,999
Total current liabilities	53,817	60,260
Long-term liabilities:		
Note payable	40,000	30,000
Other liabilities	489	769
Long-term deferred revenue	1,175	1,288
Long term income tax payable	356	806
Restructuring liabilities, less current portion		622
Total long-term liabilities	42,020	33,485

Non-controlling interest in subsidiary	667	617
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 80,081,520 and 78,571,349 shares, respectively; outstanding 44,930,303 and 45,462,744 shares, respectively	45	45
Additional paid-in capital	188,311	177,577
Treasury stock, at cost 35,151,217 shares and 33,108,605 shares, respectively	(137,336)	(127,338)
Accumulated other comprehensive income (loss)	742	(205)
Retained earnings	33,243	25,323
Total stockholders equity	85,005	75,402
	$ 181,509	$ 169,764

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

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ACTUATE CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share data)

(unaudited)

	Three Months Ended September 30, 2010	Three Months Ended September 30, 2009	Nine Months Ended September 30, 2010	Nine Months Ended September 30, 2009
Revenues:				
License fees	$ 17,765	$ 8,620	$ 37,387	$ 25,907
Maintenance	20,077	19,340	56,037	56,889
Professional services	1,925	1,391	5,707	5,352
Total revenues	39,767	29,351	99,131	88,148
Costs and expenses:				
Cost of license fees	651	267	1,589	703
Cost of services	4,970	4,185	14,596	13,718
Sales and marketing	10,767	10,231	30,468	31,433
Research and development	6,304	4,998	18,574	15,256
General and administrative	4,916	5,085	19,288	14,717
Amortization of other purchased intangibles	529	170	1,351	510
Restructuring charges	7	129	671	240
Total costs and expenses	28,144	25,065	86,537	76,577
Income from operations	11,623	4,286	12,594	11,571
Interest income and other income (expense), net	25	(405)	(860)	179
Interest expense	(424)	(347)	(1,296)	(1,057)
Income before income taxes	11,224	3,534	10,438	10,693
Provision for income taxes	4,269	395	2,518	1,951
Net income	$ 6,955	$ 3,139	$ 7,920	$ 8,742
Basic net income per share	$ 0.16	$ 0.07	$ 0.18	$ 0.19
Shares used in basic per share calculation	44,669	45,580	45,002	45,026
Diluted net income per share	$ 0.14	$ 0.06	$ 0.16	$ 0.18
Shares used in diluted per share calculation	48,425	50,484	49,046	49,235

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, 2010	Nine Months Ended September 30, 2009
Operating activities		
Net income	$ 7,920	$ 8,742
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	4,239	5,367
Tax benefits from stock-based compensation	(536)	(2,649)
Amortization of other purchased intangibles	2,245	675
Amortization of debt issuance cost	215	210
Depreciation	1,422	1,643
Change in valuation allowance on deferred tax assets	(1,548)	(575)
Accretion on short-term debt securities	256	118
Net realized gain on Auction Rate Securities (ARS)	(1,934)	
Unrealized (gain)/loss on ARS		(678)
Net realized loss on fair value of put option	1,921	
Unrealized (gain)/loss on fair value of put option		607
Changes in operating assets and liabilities, net of acquired assets and assumed liabilities:		
Accounts receivable, net of allowance	14,343	7,649
Other current assets	2,747	(314)
Accounts payable	(1,398)	(1,248)
Accrued compensation	522	(165)
Other accrued liabilities	(5,249)	131
Deferred tax assets, net of liabilities	649	115
Income taxes receivable	1,009	(1,044)
Income taxes payable	1,602	1,765
Other deferred liabilities	(280)	(202)
Restructuring liabilities	(1,570)	(2,640)
Deferred revenue	(7,559)	(5,821)
Net cash provided by operating activities	19,016	11,686
Investing activities		
Purchases of property and equipment	(703)	(1,048)
Release of restricted cash		229
Proceeds from sale and maturity of investments	25,611	13,706
Purchases of short-term investments	(24,153)	(22,243)
Acquisition of Xenos Group Inc., net of cash acquired	(27,343)	
Change in other current and non-current assets	35	(61)
Net cash used in investing activities	(26,553)	(9,417)
Financing activities		
Proceeds from the credit facility, net of issuance cost	9,983	
Tax benefit from exercise of stock options	536	2,649
Proceeds from issuance of common stock	4,565	7,906

Stock repurchases	(9,999)	(10,297)
Net cash provided by financing activities	5,085	258
Net increase (decrease) in cash and cash equivalents	(2,452)	2,527
Effect of exchange rates on cash and cash equivalents	920	730
Cash and cash equivalents at the beginning of the period	53,173	24,772
Cash and cash equivalents at the end of the period	$ 51,641	$ 28,029

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

The Company

Actuate Corporation (Actuate or the Company) provides software and services to develop and deploy Rich Information Applications. These Rich Information Applications deliver rich, interactive content that improves customer satisfaction/loyalty and corporate performance. Applications built on Actuate s open source-based platform provide all stakeholders inside and outside the firewall, including employees, customers, partners and citizens with content that they can easily understand access and manipulate to maximize revenue, cut costs, improve customer satisfaction, streamline operations, create competitive advantage and make better decisions. Actuate s goal is to ensure that all end users can seamlessly incorporate decision-making information in their day-to-day activities, opening up completely new avenues for improving corporate performance.

Actuate was incorporated in November 1993 in the State of California and re-incorporated in the State of Delaware in July 1998. Actuate s principal executive offices are located at 2207 Bridgepointe Parkway, San Mateo, California. Actuate s telephone number is 650-645-3000. Actuate maintains Web sites at www.actuate.com, www.birt-exchange.org and www.birt-exchange.com.

Basis of Presentation

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, 2009 filed with the SEC on March 10, 2010.

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.

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, 2010, 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 year 2009, we adopted new accounting guidance for non-controlling interests in subsidiaries as issued by the Financial Accounting Standards Board (FASB). The new accounting guidance establishes accounting and reporting standards for the non-controlling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a non-controlling 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 non-controlling 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 non-controlling 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, 2010, 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.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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.

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, collectability 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 fair value of the undelivered elements is deferred 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 collectability 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 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, collectability is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement.

Actuate also has a software-as-a-service offering called OnPerformance. Actuate recognizes revenue on its OnPerformance licenses ratably over the term of the underlying arrangement.

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

Credit-worthiness and collectability 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.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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 8 of the Company s consolidated financial statements in the Annual Report on Form 10-K for the fiscal year ended December 31, 2009, 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 Operations related to stock options, restricted stock units and the Employee Stock Purchase Plan (ESPP) for the three and nine months ended September 30, 2010 and 2009 were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	September 30, 2010	September 30, 2009	September 30, 2010	September 30, 2009
Stock options	$ 998	$ 1,320	$ 3,573	$ 4,448
Restricted stock units	120		290	
ESPP	125	284	376	919
Total stock-based compensation	$ 1,243	$ 1,604	$ 4,239	$ 5,367
Income tax benefit	$ 434	$ 1,429	$ 1,419	$ 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 Employee Stock Purchase Plan (the Purchase Plan) for the nine months ended September 30, 2010 and 2009 are as follows:

	Options Nine Months Ended		ESPP Nine Months Ended	
	September 30, 2010	September 30, 2009	September 30, 2010	September 30, 2009
Volatility	54.17 54.73%	57.16 59.03%	40.15 45.83%	69.17 94.69%
Expected term (years)	5.66 5.73	5.49 5.55	1.25	1.25
Risk free interest rate	1.25 2.25%	1.75 2.625%	0.26 0.35%	0.46 0.62%
Expected dividend yield	0%	0%	0%	0%
Annual forfeiture rate	2 3%	3 4%	N/A	N/A

Effective January 2010, restricted stock units (RSUs) were granted to senior management as part of the Company s annual incentive compensation program under the Amended and Restated 1998 Equity Incentive Plan. RSUs are valued based on the closing price of the Company s common stock on the grant date. In general, restricted stock units vest over four years with annual cliff vesting and are subject to the employees continuing service to the Company. For each restricted stock unit granted under the 1998 Plan, a share reserve ratio is applied for the purpose of determining the remaining number of shares reserved for future grants under the plan. The share reserve ratio is 2:1 for each restricted stock unit granted, and an equivalent of 2 shares will be deducted from the share reserve for each restricted stock unit issued. Likewise, each forfeited restricted stock unit increases the number of shares available for issuance by the applicable rate at the time of forfeiture. As of September 30, 2010, a total of 201,250 RSUs were issued and granted to the Company s senior management and non-employee Board of Directors. This program is expected to result in an incremental increase in the Company s stock-based compensation expense for the remainder of fiscal year 2010 and beyond.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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 and unvested restricted stock units using the treasury stock method and dilutive ESPP shares.

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,	
	2010	2009	2010	2009
Weighted-average common shares outstanding	44,669	45,580	45,002	45,026
Weighted-average dilutive common equivalent shares under the treasury stock method	3,756	4,904	4,044	4,209
Weighted-average common shares used in computing diluted net income per share	48,425	50,484	49,046	49,235

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 7,043,446 and 6,394,120 in the three and nine months ended September 30, 2010, respectively. The weighted average anti-dilutive restricted stock units excluded from the diluted net income per share computation for the three and nine months ending September 30, 2010 were 10,598 RSUs and zero RSUs, respectively. In the three and nine months ended in September 30, 2009, the Company excluded 3,124,635 and 7,600,668 stock options from its calculation of weighted-average common shares used in computing dilutive net income per share. Such stock options, had they been dilutive, would have been included in the computation of diluted net income per share.

The weighted average exercise price of excluded stock options was $5.61 and $5.79 for the three and nine months ended September 30, 2010, respectively. 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.

Income Taxes

The Company calculates its interim income tax provision in accordance with Financial Accounting Standards Board (FASB) authoritative guidance on interim reporting for income taxes, and on obligations for uncertain tax positions. At the end of each interim period, the Company estimates the annual effective tax rate and applies that rate to its ordinary quarterly earnings. The tax expense or benefit related to significant, unusual, or extraordinary items that will be separately reported or reported net of their related tax effect, are recognized in the interim period in which those items occur. In addition, the effect of changes in enacted tax laws or rates or tax status is recognized in the interim period in which the change occurs.

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

A valuation allowance is required, if based on the weight of available evidence it is more likely than not that some portion or all of the recorded deferred tax assets will not be realized in future periods. In evaluating our ability to recover our deferred tax assets, in full or in part, we consider all available positive and negative evidence, including our past operating results, the existence of cumulative losses in the most recent years and our forecast of future taxable income on a jurisdiction by jurisdiction basis. In determining future taxable income, we are responsible for assumptions utilized including the amount of state, federal and international pre-tax operating income, the reversal of temporary differences and the implementation of feasible and prudent tax planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates we are using to manage the underlying businesses.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

We continue to believe there is sufficient evidence to support the utilization of certain deferred tax assets. If sufficient positive evidence exists and it is more likely than not that the benefit will be realized with respect to the remaining deferred tax assets, we will release the valuation allowance. This adjustment to the valuation allowance would decrease tax expense. During the first quarter of fiscal 2010, we released $1.6 million of a valuation allowance on Canadian deferred tax assets. The change in the valuation allowance was made due to changes in judgments related to the future use of deferred tax assets. The expected utilization of these deferred tax assets changed because of changes in future year income projections and tax planning strategies.

Likewise, if there is a reduction in the projection of future U.S. and foreign income, we may need to increase the valuation allowance. Any increase in the valuation allowance would increase tax expense in the period such a determination was made.

The Company only recognizes the tax benefit from an uncertain tax position if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement.

Sales Taxes

The Company presents its revenues net of sales tax in its Consolidated Statement of Income.

Other Comprehensive Income

Other comprehensive income includes currency translation adjustments and unrealized gains 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 2010 and 2009 was comprised of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Net income	$ 6,955	$ 3,139	$ 7,920	$ 8,742
Foreign currency translation gain	1,416	664	920	730
Unrealized gain on investments	65	10	27	85
Total comprehensive income	$ 8,436	$ 3,813	$ 8,867	$ 9,557

Recent Accounting Pronouncements

In 2009, the FASB issued new accounting guidance related to the recognition of revenue from multiple element arrangements. The new guidance states that if vendor specific objective evidence or third party evidence for deliverables in an arrangement cannot be determined, companies are required to develop a best estimate of the selling price for separate deliverables and allocate arrangement consideration using the relative selling price method. We adopted this guidance as of January 1, 2010 on a prospective basis. The adoption of this guidance did not have a material impact on our consolidated financial statements.

2. Acquisition of Xenos Group Inc.

On February 1, 2010, we completed the acquisition of Xenos Group Inc. (Xenos), a provider of high-performance software solutions that utilize the scalable Xenos Enterprise Server(TM) and its components to process, extract, transform, repurpose and personalize high volumes of data and documents for storage, real-time access, ePresentment, printing and delivery in numerous formats across multiple channels. By readily repurposing, integrating with and extending the business value of existing technology, infrastructure and business applications, Xenos solutions empower organizations to adapt to changing market demands. They also improve operational efficiency, enhance business processes, reduce risk for compliance management and increase employee productivity with lowered total cost of ownership both for the enterprise and for its customers.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

The acquisition was concluded for total consideration of approximately $34.3 million ($27.3 million, net of $6.9 million of Xenos cash at the time of the acquisition). Under the terms of the agreement, we completed our tender offer to acquire all of the outstanding shares of Xenos common stock at a price of CAD 3.50 per outstanding share. The transaction was accounted for using the purchase method of accounting. We have included the financial results of Xenos in our Consolidated Financial Statements beginning on the acquisition date.

Assets acquired and liabilities assumed were recorded at their fair values as of February 1, 2010. The total $34.3 million purchase price was comprised of the following (in thousands):

		In U.S. Dollars
Acquisition of approximately 10 million shares of outstanding common stock of Xenos at CAD 3.50 per share in cash	$	33,149
Net payout for exercise of 707,000 of outstanding employee options at CAD 3.50 per option, (net of exercise price)		1,124
Estimated fair value of 30,750 earned stock options assumed and converted		60
Total purchase price	$	34,333

Under the terms of the Xenos stock option plan, any outstanding options held as of the date of acquisition became immediately vested and exercisable. In connection with the acquisition, each holder of Xenos stock options was offered one of three options: 1) to surrender the Xenos options in order to receive cash equal to the difference between CAD $3.50 and the exercise price of the options for each option surrendered, 2) to exercise the options in order to receive Common Shares, effective immediately prior to the acquisition date. Those Common Shares would then be acquired by Actuate at a price of CDN$3.50 per share, or 3) to exchange the Options for equivalent Actuate options to purchase common shares of Actuate. The Xenos options would be exchanged for Actuate Options at a calculated exchange ratio and are exercisable for Actuate Shares. The exchanged options would be fully vested and be exercisable on the day after the acquisition. Other terms of the Options would remain the same.

A total of 707,000 options were surrendered under option number 1 presented above. A net of $1.1 million in cash was paid to the option holders related to these surrendered options. This net amount was included in the total purchase consideration.

We converted options to purchase 30,750 vested shares of Xenos common stock into options to purchase approximately 19,025 shares of Actuate common stock under option 3 listed above. The estimated fair value of the stock options assumed and converted that is included in the preliminary purchase price equals $59,784. The estimated fair value of these options was determined using a Black-Scholes Merton option valuation model with the following assumptions: volatility of 66.73%; weighted average risk-free interest rate of .88%; and a dividend yield of 0%. The underlying stock price used in valuing the options was $5.31, which was the closing price for Actuate Stock on February 1, 2010.

Direct transaction costs totaling approximately $1.1 million were incurred between the fourth quarter of 2009 and the third quarter of 2010 related to the Xenos acquisition. These costs include investment banking fees, legal and accounting fees, and other external costs directly related to the acquisition. All costs were directly charged to general and administrative expense on the Condensed Consolidated Statements of Operations as incurred.

Preliminary Purchase Price Allocation

Under the purchase accounting method, the total preliminary purchase price was allocated to Xenos s net tangible and intangible assets based upon their estimated fair values as of February 1, 2010. The excess purchase price over the value of the net tangible and identifiable intangible assets was recorded as goodwill. We still consider the purchase price allocation to be preliminary due to the fact that certain tax related items have not yet been fully concluded.

The table below represents the allocation of the preliminary purchase price to the acquired net assets of Xenos based on their estimated fair values as of February 1, 2010 and the associated estimated useful lives at that date. Also, as with acquisitions that we have undertaken in the past, we have initiated structural changes in our corporate structure in order to incorporate the Xenos entities. These changes in our organizational structure are ongoing and could also affect our estimates and assumptions.

ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

	Amount (in thousands)	Weighted Average Useful life (in years)
Net tangible assets and liabilities	$ 6,362	N/A
Existing technology	7,657	7
Customer contracts and relationships	8,030	7
In-process research and development (IPR&D)	1,961	7
Favorable leases	47	5
Goodwill	10,275	N/A
Total preliminary purchase price allocation	$ 34,332	

Net tangible assets and liabilities Xenos s tangible assets and liabilities as of February 1, 2010 were adjusted to their estimated fair value as necessary. Among the net tangible assets assumed were $6.9 million in cash and cash equivalents and $1.8 million in trade receivables.

Identifiable intangible assets Existing technology acquired primarily consists of Xenos s Enterprise Server, Xenos D2e, Xenos terminalONE, and Xenos InfoWeb. The preliminary estimated fair value of the existing technology was determined based on the present value of the expected cash flows to be generated by each existing technology. Customer contracts and relationships consist of Xenos s contractual relationships and customer loyalty related to their customers as well as partner customers that resell Xenos s services to end users. We expect to amortize the fair value of these intangible assets on a straight-line basis over their respective estimated useful lives.

In-process research and development In-process research and development (IPR&D) represents the fair value of a development project that was underway at Xenos and was not yet completed as of the date of the acquisition. At the date of the acquisition the development team was still in the final stages of development and was in the process of performing final fixes to the software and finalizing minor functionality. The estimated fair value was determined by estimating the net cash flows expected to be generated from the project and discounting the net cash flows to their present value. The underlying product was released on June 28, 2010 and we are amortizing the fair value of the intangible asset on a straight-line basis over the respective estimated useful life of seven years beginning July 2010.

Goodwill Goodwill represents the excess of the purchase price over the fair value of the underlying acquired net tangible and intangible assets. The factors that contributed to the recognition of goodwill included securing buyer-specific synergies that increase revenue and profits and are not otherwise available to a marketplace participant.

Pro Forma Results

The financial information in the table below summarizes the combined results of operations of Actuate and Xenos, on a pro forma basis, as though the companies had been combined as of the beginning of the periods presented. The pro forma financial information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place earlier or of results that may occur in the future.

The data in the following pro forma financial table combines the historical results for Actuate for the nine months ended September 30, 2009 and the historical results for Xenos for the nine months ended September 30, 2009 as if the acquisition occurred on January 1, 2009. The quarterly data in the following pro forma financial table combines the historical results for Actuate and Xenos for the three months ended September 30, 2009 (in thousands, except per share data):

	Nine months ended September 30, 2009	Three months Ended September 30, 2009
Total revenues	$ 99,380	$ 33,467
Net income	8,359	3,187
Basic net income per share	.19	.07
Diluted net income per share	.17	.06
Shares used in computing basic net income per share	45,026	45,580
Shares used in computing diluted net income per share	49,235	50,484

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

3. Investment in Actuate Japan

Non-controlling (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, 2010 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 $667,000 to purchase these shares. The Company measures and discloses a redeemable non-controlling interest in accordance with the policy discussed above at the calculated redemption value of the put option embedded in the non-controlling interest. The non-controlling shareholder is also a distributor of Actuate products in Japan, although the volume of revenues sold through this distributor has historically been immaterial to Actuate Corporation. The Company consolidated 100% of the operating results and all investments in the subsidiary are eliminated in consolidation. Through September 30, 2010, the operating performance and liquidity requirements of Actuate Japan had not been material to the Company s results of operations or financial condition. 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.

4. Fair Value Measurements of Financial Assets and Liabilities

The Company adheres to FASB s authoritative guidance related to the fair value measurements of financial instruments. Under this standard, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. 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 the interest rate on this note is based on a floating market rate.

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.

	Fair value of investments as of September 30, 2010			
	Total	**Quoted Prices In Active Markets for Identical**	**Significant Other Observable Inputs**	**Significant Unobservable Inputs (Level 3)**

		Assets (Level 1)	(Level 2)	
Money market funds (1)	$ 5,033	$ 5,033	$	$
Term deposits (1)	13,750	13,750		
Commercial paper (3)	5,999		5,999	
Corporate bonds (2)	20,900		20,900	
	$ 45,682	$ 18,783	$ 26,899	$

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

	Fair value of investments as of December 31, 2009			
	Total	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds (1)	$ 29,438	$ 29,438	$	$
Term deposits (1)	2,144	2,144		
Commercial paper (2)	3,690		3,690	
Corporate bonds (2)	2,206		2,206	
ARS (2)	14,541			14,541
Put option (2)	1,921			1,921
	$ 53,940	$ 31,582	$ 5,896	$ 16,462

(1) Included in cash and cash equivalents in the Company s condensed consolidated balance sheets.
(2) Included in short term investments in the Company s condensed consolidated balance sheets.
(3) Of this amount, $5 million was included in cash and cash equivalents and the remainder was included in short term investments in the Company s condensed consolidated balance sheets.

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.

Prior to the third quarter of fiscal 2010, our investment portfolio included Auction Rate Securities (ARS). These were usually found in the form of municipal bonds, a pool of student loans or collateralized debt obligations whose interest rates were subject to reset through an auction process. The ARS held by us were primarily backed by highly rated municipal issuers. Since February 2008, substantially all auctions for ARS had failed as a result of the negative overall capital market conditions, meaning that there was not enough demand to sell the securities at auction. While the Company continued to earn interest on its ARS investments at the maximum contractual rate, these investments were not trading and therefore did not 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 provided Actuate with rights (the Put Option) to sell UBS its ARS portfolio at the $16.5 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 had stated that it would 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 had 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 was permitted to sell ARS to parties other than UBS, in which case the Put Option attached to the ARS that were sold would be extinguished.

Prior to the end of the second quarter of fiscal 2010, several of the Company s ARS investments were re-called and settled by the individual issuers at par value. In addition, Actuate exercised the Put Option for all of the remaining ARS as of June 30, 2010 and the remaining ARS balance totaling $10 million was settled in July of 2010. The Company held no investments in ARS at September 30, 2010.

The Company values all of its Level 3 investments using an income approach. The Company s ARS were valued based on a discounted cash flow model using various assumptions for expected term, discount rate, credit premium and liquidity premium.

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(Unaudited)

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 third quarter of fiscal year 2010 (in thousands).

	Fair Value Measurements Using Significant Unobservable Inputs (Level 3) ARS
Balance at December 31, 2009	$ 16,462
ARS settlement	(16,475)
Net realized gain on ARS included in earnings	1,934
Net realized loss on the fair value of Put Option included in earnings	(1,921)
Balance at September 30, 2010	$

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

	Cost	Gross Unrealized Gains	Gross Unrealized (Losses)	Unrealized Changes in Fair Value	Estimated Fair Value
Balance at September 30, 2010					
Classified as cash and cash equivalents:					
Cash	$ 27,858	$	$	$	$ 27,858
Term deposits	13,750				13,750
Money market funds	5,033				5,033
Commercial paper	5,000				5,000
	51,641				51,641
Classified as short-term investments:					
Commercial paper	999				999
Corporate bonds	20,855	48	(3)		20,900
	21,854	48	(3)		21,899
Total	$ 73,495	$ 48	$ (3)	$	$ 73,540

Cost	Gross Unrealized	Gross Unrealized	Unrealized Changes in Fair	Estimated Fair Value

		Gains	(Losses)	Value	
Balance at December 31, 2009					
Classified as cash and cash equivalents:					
Cash	$ 21,591	$	$	$	$ 21,591
Term deposits	2,144				2,144
Money market funds	29,438				29,438
	53,173				53,173
Classified as short-term investments:					
Commercial paper	3,679	13	(2)		3,690
Corporate bonds	2,200	6			2,206
ARS	16,475			(1,934)	14,541
Put option				1,921	1,921
	22,354	19	(2)	(13)	22,358
Total	$ 75,527	$ 19	$ (2)	$ (13)	$ 75,531

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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, 2010, Actuate has classified all of its securities with original maturities 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 remain highly liquid and available for use in current operations.

5. Restructuring Charges

During the first nine months of fiscal year 2010, the Company implemented restructuring actions that resulted in an aggregate charge of $624,000 and elimination of 19 positions worldwide, across all levels, primarily within the sales and marketing organization. Also included in the aggregate charges for the first nine months of 2010 was a $47,000 idle facilities charge related to the closure of one of our sales facilities in Europe.

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 following table summarizes the restructuring accrual activity during the nine months ended September 30, 2010 (in thousands):

	Severance & Benefits	Facility Related	Total
Balance at December 31, 2009	$ 415	$ 3,003	$ 3,418
Charges	624	47	671
Payments, net of rents collected on sublease for Q1	(358)	(986)	(1,344)
Payments, net of rents collected on sublease for Q2	(77)	(272)	(349)
Payments, net of rents collected on sublease for Q3	(88)	(411)	(499)
Reclassified as a long-term asset (1)		47	47
Assumed upon acquisition of Xenos (2)		116	116
Adjustments (3)	1	(26)	(25)
Balance at September 30, 2010	517	1,518	2,035
Less: current portion	(517)	(1,518)	(2,035)
Long-term balance at September 30, 2010	$	$	$

(1) The balance represents the long-term portion of the estimated operating expenses reimbursable to Actuate under its South San Francisco facility sublease agreement. This reimbursable expense was reclassified out of the restructuring accrual and into long-term assets in the third quarter of 2010.
(2) The balance represents idle facility-related liabilities assumed by us upon our acquisition of Xenos on February 1, 2010.
(3) In the table above, adjustments reflect the impact of foreign currency translation.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

6. Segment and Geographical 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,	
	2010	2009	2010	2009
Revenues:				
North America	$ 33,843	$ 23,330	$ 80,739	$ 68,912
Europe	4,669	5,216	15,015	16,761
Asia Pacific and others	1,255	805	3,377	2,475
	$ 39,767	$ 29,351	$ 99,131	$ 88,148

As of September 30, 2010, we operated solely in one segment, which is the development, marketing and support of the Actuate Enterprise Reporting Application Platform. There was one customer that accounted for more than 10% of total revenues in the three months ended September 30, 2010 and no single customer that accounted for more than 10% of total revenues for the same period last year. There was one customer that accounted for more than 10% of total revenues in the nine months ended September 30, 2010.

7. Goodwill and Other Purchased Intangible Assets

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. Following is a roll-forward of the activity that affected goodwill during the year, (in thousands):

Goodwill as of December 31, 2009	$ 36,114
Acquisition of Xenos	10,275
Goodwill as of September 30, 2010	$ 46,389

Intangibles

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

	September 30, 2010				December 31, 2009		
	Gross Carrying	Acquisition of Xenos	Accumulated Amortization	Net Carrying	Gross Carrying	Accumulated Amortization	Net Balance

	Amount			Amount	Amount		
Customer lists	$ 14,000	$ 8,030	$ (14,595)	$ 7,435	$ 14,000	$ (13,320)	$ 680
Purchased technologies	8,002	7,657	(8,676)	6,983	8,002	(7,782)	220
IPR&D		1,961	(70)	1,891			
Leases		47	(6)	41			
	$ 22,002	$ 17,695	$ (23,347)	$ 16,350	$ 22,002	$ (21,102)	$ 900

IPR&D represents the fair value of a project that is underway at Xenos at the time of acquisition. The product underlying this IPR&D item was released on June 28, 2010 and the fair value of this intangible asset is being amortized on a straight-line basis over the respective estimated useful life of seven years beginning July 2010.

Amortization expense of purchased technology and other intangible assets was approximately $857,000 and $225,000 for the quarters ended September 30, 2010 and 2009, respectively. Of this total, approximately $328,000 and $55,000 was related to the amortization of purchased technology. Amortization expense of purchased intangible assets was approximately $2.2 million and $675,000 for the nine months ended September 30, 2010 and 2009, respectively. Of this total, approximately $894,000 and $165,000 was related to the amortization of purchased technologies. Amortization of purchased technology is included in cost of license fees in the accompanying condensed consolidated statements of operations. The expected remaining annual amortization expense is summarized as follows (in thousands):

ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

Fiscal Year	Purchased Technology and Intangibles
2010 (remainder of year)	$ 858
2011	2,530
2012	2,530
2013	2,530
2014	2,530
2015 and thereafter	5,372
	$ 16,350

8. 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 recurring maintenance revenue. The Company used $30.0 million of the proceeds from the Credit Agreement in the tender offer it completed in December 2008. On February 1, 2010 the Company borrowed an additional $10 million under the Credit Agreement to fund the acquisition of Xenos. As of September 30, 2010, the Company owed $40.0 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 initial costs associated with the facility, including legal and closing fees, amounted to approximately $1.1 million. Of these total costs, approximately $1.0 million was paid as of September 30, 2010. The remaining balance is comprised of a commitment fee totaling $125,000 that is due and payable on the third anniversary of the agreement, which will be in November of fiscal year 2011. These costs are being capitalized and amortized over four years. They are classified in the Company s Consolidated Balance Sheet as current assets if amortized within one year or non-current assets if amortized beyond one year.

As of September 30, 2010, the remaining balance available under the revolving credit facility was approximately $10 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 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, 2010, the Company was able to meet the 80% test as well as the $10 million minimum 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. For the third quarter and the first nine months of fiscal year 2010, we recorded interest expense totaling approximately $340,000 and approximately $1.0 million, respectively, on the utilized portion of our credit facility with Wells Fargo Financial (WFF). During the third quarter and the first nine months of fiscal 2010, we also recorded unused line fees and amortized debt issuance costs of approximately $85,000, and $258,000, respectively. For the third quarter and the first nine months of fiscal year 2009, we recorded interest expense totaling approximately $255,000 and $769,000, respectively, on the utilized portion of our credit facility with Wells Fargo Financial (WFF). During the third quarter and the first nine months of fiscal year 2009, we also recorded unused line fees and amortized debt issuance costs of approximately $96,000, and $287,000, respectively. The amortized debt issuance costs are amortized over the term of the credit facility. The increase in the interest expense in fiscal 2010 was due to $10 million in additional borrowings under the credit facility which was used to fund the acquisition of Xenos in February 2010.

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(Unaudited)

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, 2010. 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.

Operating Lease Commitments

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, 2010, the deferred rent liability balance totaled approximately $692,000 and this balance declines through 2012 when contractual cash payments exceed the straight-line lease expense. Of this total deferred rent liability balance, approximately $357,000 was classified under the current accrued liabilities section of our consolidated balance sheet with the remaining portion of approximately $335,000 classified under other long term liabilities section of our consolidated balance sheet at September 30, 2010. 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 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, 2010.

Equity Incentive Plans

An individual who first joins the Board of Directors as a non-employee director will be awarded an option to purchase 25,000 shares of the Corporation s Common Stock and a restricted stock unit award covering 12,500 shares of the Corporation s Common Stock. Each option award and each restricted stock unit award granted to a new non-employee director will vest upon the non-employee director s continued Board service according to the following schedules. The option award will vest over four years, with twenty five percent (25%) of the award vesting on the one year anniversary of the option grant and the remainder vesting in equal monthly installments over the next 36 months. The restricted stock unit award for a new non-employee director will vest over 4 years in equal annual installments. The first installment will vest on the 13-month anniversary of the award date and the remainder will vest in equal annual installments on the second, third and fourth anniversaries of the award date. Starting with the 2010 Annual Meeting of Stockholders, each continuing non-employee director will be awarded an option to purchase 16,000 shares of the Corporation s Common Stock and a restricted stock unit award covering 8,000 shares of the Corporation s Common Stock at each Annual Meeting of Stockholders. Each option for each continuing non-employee director will vest upon the non-employee directors continued Board service through the first anniversary of the award date. Each restricted stock unit award will vest upon the non-employee directors continued Board service through the 13-month anniversary of the award date. All grants will be made under the 1998 Plan. Each restricted stock unit award and each option award will vest in full on an accelerated basis upon (i) an approved acquisition of the Corporation by merger or consolidation, (ii) a sale of all or substantially all of the Corporation s assets, (iii) the successful completion of a tender or exchange offer for securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation s outstanding securities, or (iv) the death or disability of the optionee while serving as a member of the Board of

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(Unaudited)

Directors. Each restricted stock unit award will entitle the recipient to one share of the Corporation s Common Stock on the date when the applicable vesting requirements for that unit are satisfied. A non-employee director may, in accordance with applicable tax laws and regulations, elect to defer the issuance of the shares of Common Stock that vest pursuant to his or her restricted stock unit award until his or her cessation of Board service.

All directors are eligible to receive option awards under Actuate s Amended and Restated 1998 Equity Incentive Plan (the 1998 Plan). In January 2009, the Board of Directors resolved that starting with the grant awards to be made at the 2009 Annual Meeting of Stockholders all grant awards to the non-employee directors shall be made under the 1998 Plan rather than the Directors Plan.

In connection with the Xenos acquisition, Actuate s Board of Directors duly authorized the issuance of stock options to eligible employees from the Company s 1998 Equity Incentive Plan. A total of 573,800 non-statutory stock options were issued in February of 2010 with the exercise price of $5.31. Each grant shall fully vest in four years with 25% cliff vesting at the end of year one and the remaining balance to vest in thirty-nine successive monthly installments.

As an employee retention incentive, Actuate also invited Xenos employees who were holders of Xenos Options to exchange any Options that they did not exercise in connection with the Offer for options to purchase shares of common stock of Actuate on a tax-free rollover basis (an Option Exchange). The replacement options issued by Actuate would have the same intrinsic value as the options given up by Xenos. On February 1, 2010, 30,750 Xenos options were exchanged for 19,025 Actuate options with exercise prices ranging from $2.04 to $3.54. These options were fully vested and exercisable at the date of exchange.

All new employee options are subject to the same vesting schedule (twenty-five percent of the option shares will vest on the one year anniversary of the option grant date and the remaining option shares will vest in thirty-nine equal monthly installments over the thirty-nine month period measured from the first anniversary of the option grant date, provided the optionee continues to provide services to the Corporation through each applicable vesting date) and all have ten year terms.

Shares issued as a result of the exercise of options under any of our plans would be fulfilled through shares currently in our existing pools. Total authorized but unissued shares were 35,046,080 as of September 30, 2010.

The weighted average grant date fair value of options granted during the quarter ended September 30, 2010 was $2.33 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, 2010 was $336,000.

	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	3,181,676	2.41 years	$ 1.49	3,181,676	$ 1.49
$1.56-$3.36	1,929,366	4.01 years	$ 2.68	1,906,068	$ 2.68
$3.37-$3.56	1,811,162	7.42 years	$ 3.55	862,155	$ 3.55
$3.58-$3.89	2,058,099	3.82 years	$ 3.71	1,780,448	$ 3.68
$3.92-$4.80	2,862,737	7.33 years	$ 4.66	1,003,957	$ 4.51
$4.84-$5.31	2,325,523	6.87 years	$ 5.15	1,570,326	$ 5.11
$5.34-$6.93	2,135,674	6.81 years	$ 6.17	1,472,225	$ 6.16
$6.95-$17.50	318,700	2.31 years	$ 10.81	293,467	$ 11.09
$0.78-$17.50	16,622,937	5.35 years	$ 3.97	12,070,322	$ 3.67

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

	September 30, 2010	September 30, 2009
Options Outstanding Vested and Expected to Vest		
Vested and expected to vest, net of expected forfeitures	16,453,035	15,895,684
Aggregate intrinsic value (in thousands)	$ 23,654	$ 33,879
Weighted average exercise price per share	$ 3.96	$ 3.94
Weighted average remaining contractual term (in years)	5.32	5.69
Options Exercisable		
Options currently exercisable	12,070,322	11,456,358
Aggregate intrinsic value of currently exercisable options (in thousands)	$ 21,053	$ 28,062
Weighted average exercise price per share	$ 3.67	$ 3.69
Weighted average remaining contractual term (in years)	4.22	4.75

As of September 30, 2010, the number of options reserved for future grants under all option plans was 15,846,549. The number of shares available for future purchase under the ESPP Plan was 2,155,069.

Summary of Restricted Stock Units (RSUs)

As of September 30, 2010, a total of 402,500 RSUs will be deducted from the share reserve for future restricted stock units issued.

The weighted average grant date fair value of restricted stock units granted during the quarter ended September 30, 2010 was $5.25 per unit.

	Number of Units	Weighted Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (thousands)
Restricted stock units outstanding	201,250	1.74	$ 1,036
Restricted stock units vested and expected to vest	190,967	1.70	$ 983

9. Deferred Revenue

Deferred revenue consists of the following (in thousands):

	September 30, 2010	December 31, 2009
Maintenance and support	$ 37,336	$ 43,319
Other	2,923	2,968
Total deferred revenue	40,259	46,287
Less: current portion	(39,084)	(44,999)
Long-term deferred revenue	$ 1,175	$ 1,288

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

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

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

The following information should be read in conjunction with the historical financial information and the notes thereto included in Item 1 of this Quarterly Report on Form 10-Q, the consolidated financial statements and notes thereto and the related Management s Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended December 31, 2009 as filed with the Securities and Exchange Commission on March 10, 2010.

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, 2009 and in other filings made by the Company with the Securities and Exchange Commission.

Overview

Actuate Corporation (We , Actuate or the Company) was incorporated in November 1993 in the State of California and reincorporated in the State of Delaware in July 1998. Actuate provides software and services to develop and deploy Rich Information Applications. These Rich Information Applications deliver rich interactive content that improves customer satisfaction/loyalty and corporate performance. Applications built on Actuate s open source-based platform provide all stakeholders inside and outside the firewall, including employees, customers, partners and citizens, with content that they can easily understand access and manipulate to maximize revenue, cut costs, improve customer satisfaction, streamline operations, create competitive advantage and make better decisions. Actuate s goal is to ensure that all end users can seamlessly incorporate decision-making information into their day-to-day activities, opening up completely new avenues for improving corporate performance. Actuate s telephone number is 650-645-3000. Actuate maintains Web sites at www.actuate.com, www.birt-exchange.org and www.birt-exchange.com . The information posted on our Web sites is not incorporated into this quarterly 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.

Despite the recent global recession, we have achieved year-to-date profitability and positive cash flows. We achieved these results not only through our solid execution, leading technology and strong customer relationships, but also because of our commitment to operating efficiencies. As we aligned our business to weather a turbulent and unpredictable macro-economic environment, these efficiencies have resulted in reductions to our operating expenses, after excluding the increased operating expenses added as a result of the Xeons acquisition.

Nevertheless, our business model and longer-term financial results are not immune to a sustained economic downturn. The financial turmoil and economic uncertainty over the last two years has caused some of our customers to postpone investments and purchase decisions, decrease their spending or delay payments to us. During fiscal year 2009 we saw increasing pressures on our customers Information Technology budgets, and therefore our customers sought 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 year 2008 and fiscal year 2009. We have also seen a similar impact on our maintenance renewal and consulting business in the recent years. If the financial turmoil and economic uncertainty continue and cause further customer bankruptcies or consolidation among our customers, our future revenue and operating income results could continue to be adversely affected.

We continue to monitor market conditions and may make adjustments to our business in order to reduce the adverse impact that the prolonged economic downturn could have on our business. We expect to continue to explore both organic and inorganic growth opportunities. In particular, we may acquire companies or technology that can contribute to the strategic, operational and financial performance of our business. We believe that the combination of our solid financials, leading technology and strong customer relationships will help us successfully execute our strategies.

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On February 1, 2010, we acquired Xenos Group Inc. (Xenos) a publicly traded company headquartered in Ontario, Canada, and a market-leading provider of high-performance software solutions. The company s solutions, based on the scalable Xenos Enterprise Server and its components, process, extract, transform, repurpose and personalize high volumes of data and documents for storage, real-time access, ePresentment, printing and delivery in numerous formats across multiple channels. Actuate intends to enhance its current product offering by adding Xenos s products and technology to its existing product line.

For the remainder of fiscal year 2010 and into 2011, we expect three additional trends to continue that would have a significant impact on the results of our operations. We currently believe that corporate IT budgets will grow only modestly if at all in the remainder of fiscal year 2010 and into 2011 particularly among financial services companies in the United States. Second, corporations are reluctant to buy software from new vendors and we continue to witness corporations consolidating their Business Intelligence, Rich Internet Application (the market category that includes Rich Information Applications) and Performance Management software purchases with fewer suppliers. Finally, we expect to continue experiencing vigorous competition in the Rich Internet Applications market. Several of our competitors have released products that are marketed to be directly competitive with our Rich Information Applications offerings. The existence of these competitive products may require additional sales and marketing efforts to differentiate our products, which could result in extended sales cycles. We believe that competition in the Rich Internet Applications market will be vigorous in the near future.

For fiscal year 2010, we will continue to pursue the following strategic initiatives to improve revenue growth:

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

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

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

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

- Delivering a Highly Differentiated Performance Management Offering We have combined Actuate BIRT Performance Scorecard applications and Actuate s Rich Information Application-ready platform to provide capabilities for distributing accountability throughout the enterprise.

In addition to the above, in fiscal year 2010 we initiated strategies involving the recent acquisition of Xenos. As part of Actuate s product portfolio, the Xenos product family will continue to be fully supported and drive value for customers as it does in many applications today. The planned integration will enable new and existing customers to leverage both Xenos and Actuate technologies to efficiently address new challenges and deliver higher value.

We plan to leverage Actuate s BIRT technology and Rich Information Application platform to provide rich, interactive delivery and analysis of information sourced from documents and print streams accessed by Xenos products. The combined technologies will enable agile response to business demands without reworking existing infrastructure. The integration of Xenos product capabilities into Actuate s enterprise class, highly scalable BIRT iServer product line will provide a new deployment option. This integration will enhance the existing Xenos Enterprise Server product that provides a unified, easy to manage platform for applications looking to integrate existing documents and print streams with the next generation information delivery and Business Intelligence capabilities provided by Actuate s flagship BIRT iServer and BIRT technology.

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

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	Three Months Ended September 30, (in thousands except per share data)			
	2010	2009	Change	% Change
Financial summary				
Total revenues	$ 39,767	$ 29,351	$ 10,416	35%
Total operating expenses	28,144	25,065	3,079	12%
Income from operations	11,623	4,286	7,337	171%
Operating margins	29%	15%	14%	93%
Net income	$ 6,955	$ 3,139	$ 3,816	122%
Diluted net income per share	$ 0.14	$ 0.06	$ 0.08	133%
Shares used in diluted per share calculation	48,425	50,484	(2,059)	(4)%

Our total revenues for the third quarter of fiscal year 2010 were higher than prior year at $39.8 million compared to $29.4 million reported in the third quarter of fiscal 2009. Included in the third quarter of fiscal year 2010 results were revenues attributed to Xenos, which we acquired on February 1, 2010.

The fluctuations in revenues during the third quarter of fiscal 2010 were mainly due to the following factors:

Increase in total revenues due to the conclusion of an $11 million revenue transaction with International Business Machines Corporation (IBM).

Increase in total revenues due to the acquisition of Xenos, which we acquired on February 1, 2010.

Increase in license revenues due to the conclusion of a royalty dispute with Oracle America, Inc. (Oracle) in the second quarter of 2010, which contributed to approximately $1.3 million of revenue in the third quarter of 2010.

An increase in professional services revenues due primarily to the acquisition of Xenos. Despite this increase, the professional services revenues remain weak mainly due to a slowing economy 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. These BIRT-based projects do not require professional service to the same extent as the Company s traditional designer products.

License growth slowed from fiscal 2008 through the first half of fiscal 2010, which resulted in a negative compounding effect on our maintenance renewal stream. We continue to experience higher declines in maintenance renewals primarily related to certain of our legacy products. In the third quarter of 2010, we experienced higher overall license and maintenance revenue levels largely due to the IBM transaction discussed earlier. However, we do not anticipate that this agreement will result in any significant change in our maintenance renewal stream in the future.

On September 16, 2010, Actuate and International Business Machines Corporation (IBM) entered into a binding memorandum of understanding (the MOU) to end a dispute regarding distributions of Actuate software by IBM. Under the MOU, IBM agreed to pay Actuate a total of $11 million within five (5) business days of execution of a definitive agreement, which the parties signed on September 22, 2010. Of this total, approximately $8.9 million was apportioned to license and the remaining $2.1 million to maintenance revenue during the third quarter of fiscal 2010.

On June 14, 2010, we entered into an agreement (the Agreement) with Oracle to end a dispute regarding distributions of Actuate software by Oracle. Oracle agreed to pay us a total of $16.0 million in twelve equal quarterly installments effective June 2010 through March 2013 (installment period). The terms of the agreement called for equal cash payments by Oracle to us over an extended period of time and in accordance with a pre-determined schedule. Accordingly, we expect to recognize revenue similar to an extended payment term contract. Consequently, every period as the payments from Oracle come due, approximately $1.3 million of revenue will be recognized by us. This amount will be apportioned between license and maintenance revenue based on the maintenance rate dictated in the underlying Oracle contract.

The increase in our operating margins was due mainly to the IBM transaction and approximately $1.1 million reduction in our legal fees associated mainly with the Oracle case which we settled on June 14, 2010. We have other ongoing litigation with certain customers relating to their compliance with our license and services agreements and consequently we expect to incur legal fees associated with our contract compliance matters in the future. Nonetheless, we expect the level of legal fees to decline significantly in the near term because of the settlement of the Oracle matter and the current state of the remainder of the Company s pending litigation.

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As a result of fluctuations in foreign currency exchange rates, our revenues were negatively impacted by approximately $120,000 while our operating expenses were positively impacted by approximately $170,000 for the third quarter of fiscal year 2010.

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.

Valuation of Goodwill. We evaluate goodwill, at a minimum, on an annual basis in the fourth quarter of each fiscal year, and whenever events and changes in circumstances suggest that the carrying amount may not be recoverable. Goodwill is tested at the reporting unit level by comparing the reporting unit s carrying amount, including goodwill, to the fair value of the reporting unit. The Company begins its impairment test by applying a Market approach. Given the Company has one reporting unit; this approach involves comparing the market capitalization of the Company to its carrying value. If this Market approach derives a fair value that significantly exceeds the carrying value of the Company then no further testing is performed. However, if the Market approach indicates the fair value does not significantly exceed the carrying value of the Company, we perform a supplemental calculation of the estimated fair value of the reporting unit using an Income approach. We then consider the results of both the Market approach and Income approach to determine whether or not it is necessary to move to the second step of the goodwill impairment analysis in order to measure the amount of any impairment loss.

Thus far, the Market approach has consistently indicated that the estimated fair value of the reporting unit was significantly higher than the carrying value. Therefore, we have determined that there has been no impairment and consequently it has not been necessary to perform a supplemental Income approach to the valuation.

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, 2009, as filed with the SEC on Form 10-K on March 10, 2010.

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,		Nine Months Ended September 30,	
	2010	**2009**	**2010**	**2009**
Revenues:				
License fees	44%	29%	38%	29%
Maintenance	51	66	56	65
Professional services and training	5	5	6	6
Total revenues	100	100	100	100
Costs and expenses:				
Cost of license fees	2	1	2	1
Cost of services	13	14	15	15
Sales and marketing	27	35	31	36
Research and development	16	17	19	17
General and administrative	12	17	19	17
Amortization of other purchased intangibles	1	1	1	1
Restructuring charges			1	

Total costs and expenses	71	85	88	87
Income from operations	29	15	12	13
Interest and other income (expense), net		(2)	(1)	
Interest expense	(1)	(1)	(1)	(1)
Income before income taxes	28	12	10	12
Provision for income taxes	11	1	2	2
Net income	17%	11%	8%	10%

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Revenues

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

	Three Months Ended (In thousands) September 30,				Nine Months Ended (In thousands) September 30,			
	2010	2009	Variance $ s	Variance %	2010	2009	Variance $ s	Variance %
Revenues								
License fees	$ 17,765	$ 8,620	$ 9,145	106%	$ 37,387	$ 25,907	$ 11,480	44%
Maintenance	20,077	19,340	737	4%	56,037	56,889	(852)	(1)%
Professional services and training	1,925	1,391	534	38%	5,707	5,352	355	7%
Total Revenues	**$ 39,767**	**$ 29,351**	**$ 10,416**	**35%**	**$ 99,131**	**$ 88,148**	**$ 10,983**	**12%**
% of Revenue								
License fees	44%	29%			38%	29%		
Maintenance	51%	66%			56%	65%		
Professional services and training	5%	5%			6%	6%		
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. Our total revenues increased from $29.4 million for the quarter ended September 30, 2009 to $39.8 million for the quarter ended September 30, 2010. This increase was primarily due to the conclusion of the IBM transaction in the third quarter of this year which resulted in $11 million of additional revenue. Also included in the third quarter of fiscal year 2010 results were revenues attributed to Xenos which we acquired on February 1, 2010. The acquisition of Xenos resulted in an overall increase to our license revenues for the third quarter of fiscal 2010 as compared to the same period last year. We also experienced an increase in our professional services revenues due primarily to the acquisition of Xenos. Despite this increase, the professional services revenues remain weak mainly due to a challenging economy 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. These BIRT-based projects do not require professional service to the same extent as the Company s traditional designer products. The increase in maintenance revenue was mostly driven by the $11 million IBM transaction in the third quarter of 2010 which was apportioned between license and maintenance revenue based on the maintenance rate dictated in the underlying IBM contract.

For the first nine months of fiscal year 2010, 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 4% from $19.2 million in the first nine months of fiscal 2009 to approximately $18.4 million in the first nine months of fiscal 2010 while North America revenues increased by 17% or approximately $11.8 million. The increase in North America revenues was primarily due to the IBM transaction. Despite the IBM transaction, we experienced lower maintenance and support revenues during the first nine months of 2010 as continued reductions in our license revenues from the onset of the global recession in early 2008 has resulted in a negative compounding effect on our maintenance revenues. We also continue to experience higher declines in maintenance renewals primarily related to certain of our legacy products. The international revenues represented 19% of our total revenues versus 22% in the same period last year. The impact of exchange rate fluctuations on revenue transactions denominated in foreign currencies was minimal in fiscal 2010.

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

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
License Revenues								
North America	$ 16,434	$ 7,424	$ 9,010	121%	$ 32,293	$ 21,112	$ 11,181	53%
Europe	853	1,028	(175)	(17)%	3,870	4,293	(423)	(10)%
APAC	478	168	310	185%	1,224	502	722	144%
Total License Revenues	**$ 17,765**	**$ 8,620**	**$ 9,145**	**106%**	**$ 37,387**	**$ 25,907**	**$ 11,480**	**44%**
% of total revenue	44%	29%			38%	29%		

License fees. The increase in license revenues for the third quarter of fiscal year 2010 over the same period in the prior year was due primarily to:

A favorable transaction with IBM which ended a dispute regarding distributions of Actuate software by IBM in the third quarter of fiscal 2010,

Revenues from our acquisition of Xenos in the first quarter of fiscal 2010, and

Revenues from our transaction with Oracle during the second quarter of 2010 which ended a dispute regarding distributions of Actuate software by Oracle. The agreement required Oracle to pay Actuate a total of $16.0 million in twelve equal quarterly installments effective June 2010 through March 2013. The terms of the agreement called for equal cash payments by Oracle to Actuate over an extended period of time and in accordance with a pre-determined schedule. Accordingly, Actuate recognizes the revenue similar to an extended payment term contract. Consequently, every period as the payments from Oracle become due, approximately $1.3 million of revenue will be recognized by Actuate. This amount will be apportioned between license and maintenance revenue based on the maintenance rate dictated in the underlying Oracle contract.

The increases above, however, were partially offset by continued weakness in corporate spending due to macro economic conditions, mainly in Europe, which are causing customers to delay purchases and or work on ways to grow optimal efficiencies out of existing infrastructure server environments.

North America experienced a 121% or approximately $9 million increase in license revenues, while our European region declined by 17%. Our overall international regions, including Asia, experienced an 11% or approximately $135,000 increase in license revenues during the third quarter of fiscal 2010. Foreign currency exchange losses negatively impacted our international license revenues by approximately $40,000 during the quarter.

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

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%

Services Revenues								
Maintenance and support	$ 20,077	$ 19,340	$ 737	4%	$ 56,037	$ 56,889	$ (852)	(1)%
Professional services	1,925	1,391	534	38%	5,707	5,352	355	7%
Total Services Revenues	**$ 22,002**	**$ 20,731**	**$ 1,271**	**6%**	**$ 61,744**	**$ 62,241**	**$ (497)**	**(1)%**
% of Services Revenue								
Maintenance and support	91%	93%			91%	91%		
Professional services	9%	7%			9%	9%		
Total Services Revenues	**100%**	**100%**			**100%**	**100%**		

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Services. Services revenue is comprised of maintenance and support, professional services, and training. The 6% increase in services revenues was driven primarily by the IBM transaction which we concluded in the third quarter of fiscal 2010 and from our acquisition of Xenos, which was completed on February 1, 2010. Despite these increases, we continue to experience decreases in our maintenance and support revenues as reductions in our license revenues from the onset of the global recession in early 2008 has resulted in a negative compounding effect on our maintenance revenues. We continue to experience higher declines in maintenance renewals primarily related to certain of our legacy products.

Our professional services and consulting revenues increased during the third quarter of 2010 due primarily to the acquisition of Xenos. Despite this increase, 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. These BIRT-based projects do not require professional service to the same extent as the Company s traditional designer products.

The slight decrease in services revenues for the nine months ended September 30, 2010 was primarily attributed to a decrease in our non-Xenos professional services revenues. We also experienced a decrease in our maintenance and support revenues which more than offset the increase attributed to the IBM and Oracle transactions as continued reductions in our license revenues from the onset of the global recession in 2008 has resulted in a negative compounding effect on our maintenance revenues. We continue to experience higher levels of declines in maintenance renewals primarily related to certain of our legacy products.

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

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30, 2010	September 30, 2009	Variance $ s	Variance %	September 30, 2010	September 30, 2009	Variance $ s	Variance %
Services Revenues								
North America	$ 17,409	$ 15,906	$ 1,503	9%	$ 48,446	$ 47,800	$ 646	1%
Europe	3,816	4,188	(372)	(9)%	11,145	12,468	(1,323)	(11)%
APAC	777	637	140	22%	2,153	1,973	180	9%
Total Services	**$ 22,002**	**$ 20,731**	**$ 1,271**	**6%**	**$ 61,744**	**$ 62,241**	**$ (497)**	**(1)%**
% of total revenue	55%	71%			62%	71%		

By region, North America accounted for approximately 79% of the total services revenue in the third quarter and 78% of the total services revenue in the first nine months of fiscal 2010 while for the same periods international regions accounted for 21% and 22% of the total services revenues, respectively. For the three and nine months of fiscal 2009, North America accounted for approximately 77% of the total services revenue while the international regions accounted for 23% of the total services revenues, respectively.

Costs and Expenses

Cost of license fees

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30, 2010	September 30, 2009	Variance $ s	Variance %	September 30, 2010	September 30, 2009	Variance $ s	Variance %
Cost of license fees	$ 651	$ 267	$ 384	144%	$ 1,589	$ 703	$ 886	126%
% of license revenue	4%	3%			4%	3%		

Cost of license fees consists primarily of product packaging, documentation, production costs and the amortization of purchased technology. The increase in cost of license fees in absolute dollars for the third quarter and the first nine months of fiscal year 2010, compared to the corresponding periods in the prior year, was due primarily to amortization of Xenos purchased intangibles which we started amortizing in February of 2010. We expect our cost of license fees, as a percentage of revenues from license fees, to remain between 4% and 5% of revenues from license fees for the remainder of fiscal year 2010.

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Cost of services

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
Cost of services	$ 4,970	$ 4,185	$ 785	19%	$ 14,596	$ 13,718	$ 878	6%
% of services revenue	23%	20%			24%	22%		

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 increase in cost of services for the third quarter of fiscal year 2010, compared to the corresponding period in the prior year, was primarily due to our acquisition of Xenos in February of 2010. This increase was partially offset by decrease in employee compensation and related costs in response to continued reductions in consulting revenues as demand for Actuate s professional services engagements decreased in fiscal year 2010. As a result, we reduced our non-Xenos professional consulting headcount by approximately 27% or 9 employees from 33 at the end of the third quarter of 2009 to 24 employees at end of the third quarter of 2010. These reductions in headcount translated to lower compensation, employee benefits, travel and third party consulting expenses for non-Xenos professional services personnel during the third quarter of fiscal 2010.

For the nine months ended September 30, 2010, we experienced reductions in similar categories of costs as we did during the quarter. Excluding Xenos, employee compensation, travel and third party consulting expenses decreased by approximately $1.0 million due to slowing revenues and reduced consulting headcount. These reductions in cost were offset by an overall increase in cost of services due to our acquisition of Xenos in February of 2010.

We currently expect our cost of services expenses as a percentage of total services revenues to be in the range of 23% to 25% of total services revenues for the remainder of fiscal year 2010.

Sales and marketing

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
Sales and marketing	$ 10,767	$ 10,231	$ 536	5%	$ 30,468	$ 31,433	$ (965)	(3)%
% of total revenue	27%	35%			31%	36%		

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 increase in sales and marketing for the third quarter of fiscal year 2010, compared to the corresponding period in the prior year, was primarily due to our acquisition of Xenos in February of 2010. Partially offsetting this increase were reductions in non-Xenos related expenses in almost every major expense category in the third quarter of 2010 compared to the same period last year. One of the main drivers accounting for this decrease was employee compensation as we reduced our global non-Xenos sales and marketing headcount by approximately 11% from 154 at the end of the third quarter 2009 to 139 at the end of the third quarter of fiscal 2010. The reduction in headcount resulted in approximately $750,000 decrease in compensation expense compared to the third quarter of last year. However, during the third quarter of 2010, we closed several large license transactions and as a consequence our commission and bonus expenses increased by approximately $530,000 over the same period last year. We also experienced decreases during the third quarter of 2010 in marketing program expenses which resulted in approximately $350,000 in cost reductions due primarily to the elimination of global programs.

For the nine months ended September 30, 2010, we experienced reductions in similar categories of costs as we did during the quarter. Employee compensation decreased by approximately $2.2 million due to the reductions in non-Xenos headcount as mentioned above. These reductions were offset by an increase in commission expense due to the closure of several large license transactions during the second and third quarters of fiscal 2010 and escalated payouts due to the conclusion of our sales year on Jun 30, 2010. Marketing program costs decreased by approximately $1.7 million during the first nine months of fiscal 2010 compared to the same period last year due to reasons mentioned above. These decreases were offset by increased operating expenses as a result of our acquisition of Xenos in February of 2010.

We currently expect our sales and marketing expenses as a percentage of total revenues to be in the range of 27% to 35% of total revenues for the remainder of fiscal year 2010.

Research and development

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
Research and development	$ 6,304	$ 4,998	$ 1,306	26%	$ 18,574	$ 15,256	$ 3,318	22%
% of total revenue	16%	17%			19%	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 increase in research and development expenses in the third quarter and the first nine months of fiscal year 2010 was primarily due to the acquisition of Xenos in February of 2010. 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 20% of total revenues for the remainder of fiscal year 2010.

General and administrative

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
General and administrative	$ 4,916	$ 5,085	$ (169)	(3)%	$ 19,288	$ 14,717	$ 4,571	31%
% of total revenue	12%	17%			19%	17%		

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 decrease in general and administrative expenses in both absolute dollars and as a percentage of total revenues for the third quarter of fiscal year 2010 was primarily due to reductions in legal fees resulting from successful settlement of several contract compliance matters prior to the end of third quarter 2010. We have other ongoing litigation with certain customers relating to their compliance with our license and services agreements and consequently we expect to incur legal fees associated with our contract compliance matters in the future. Nonetheless, we expect the level of legal fees to decline significantly in the near term because of the settlement of several large compliance matters and the current state of the remainder of the Company s pending litigation. These decreases in legal fees were partially offset by an overall increase in general and administrative expenses due to our acquisition of Xenos which was completed in February 2010 and increases in employee compensation due primarily to accrued bonus tied to the Company s third quarter 2010 operating results.

For the nine months ended September 30, 2010 the increase in general and administrative expenses was primarily due to increased legal fees of approximately $4.3 million due mostly to legal fees resulting from contract compliance matters and our acquisition of Xenos during the first quarter of 2010. These increases were partially offset by a reduction in stock-based compensation as we issued fewer stock option grants to our employees during fiscal 2010 compared to fiscal 2009.

We expect our general and administrative expenses to decrease in absolute dollars and as a percentage of total revenues for the remainder of fiscal year 2010 due to the resolution of our royalty dispute with Oracle. We anticipate our general and administrative expenses to be in the range of 15% to 20% of total revenues for the remainder of fiscal year 2010.

Amortization of intangibles

	Three Months Ended (In thousands)	Nine Months Ended (In thousands)
	September 30,	September 30,

	2010	2009	Variance $ s	Variance %	2010	2009	Variance $ s	Variance %
Amortization of other purchased intangibles	$ 529	$ 170	$ 359	211%	$ 1,351	$ 510	$ 841	165%
% of total revenue	1%	1%			1%	1%		

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Amortization expense increased during the third quarter and the first nine months of fiscal 2010 as compared to the same periods in fiscal 2009 due to amortization expense associated with intangibles assets purchased through the acquisition of Xenos. These purchased intangibles are being amortized over their estimated useful lives of seven years. In addition, as a result of our acquisition of performancesoft in the first quarter of fiscal 2006, we acquired purchased intangibles which are amortized over their estimated useful lives of five years.

Restructuring charges

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
Restructuring charges	$ 7	$ 129	$ (122)	(95)%	$ 671	$ 240	$ 431	180%
% of total revenue	%	%			1%	%		

Historically restructuring charges have included costs associated with reductions in workforce, exits of idle facilities and disposals of fixed assets. These estimates were impacted by the rules governing the termination of employees, especially those in foreign countries.

During the first nine months of fiscal year 2010, the Company implemented restructuring actions that resulted in an aggregate charge of $671,000 and elimination of 19 positions worldwide, across all levels primarily within the sales and marketing organization.

Interest and other income, net

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30,		Variance	Variance	September 30,		Variance	Variance
	2010	2009	$ s	%	2010	2009	$ s	%
Interest and other income, net	$ 86	$ 185	$ (99)	(54)%	$ 372	$ 740	$ (368)	(50)%
Foreign exchange gain/(loss)	(61)	(590)	529	(90)%	(1,232)	(561)	(671)	120%
Total interest income and other income (expense), net	$ 25	$ (405)	$ 430	106%	$ (860)	$ 179	$ (1,039)	(580)%
Interest expense	$ (424)	$ (347)	$ (77)	22%	$ (1,296)	$ (1,057)	$ (239)	23%

Interest income for the third quarter and the first nine months of fiscal 2010 decreased due to an overall decrease in the average cash balance. On average, our cash and investment balances were lower because we used approximately $27.3 million, net of the acquired cash, to pay for the acquisition of Xenos and spent another $10 million on share buybacks during the first nine months of fiscal 2010. We also experienced foreign exchange losses during the third quarter as well as the first nine months of fiscal 2010 due mainly 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. We also recorded interest expense totaling approximately $353,000, and approximately $1.1 million during the third quarter and the first nine months of fiscal 2010, respectively as compared to approximately $277,000 and $848,000 for the comparative periods last year. The increases in interest expense for the third quarter and the first nine months of 2010 over fiscal 2009 were due to $10 million in additional borrowings under our existing credit facility with Wells Fargo Foothill (WFF). The additional borrowing was used to fund the acquisition of Xenos which was completed on February 1, 2010. In addition to interest expense, we also recorded amortized debt issuance costs during the third quarter and the first nine months of fiscal 2010 totaling approximately $71,000 and $215,000, respectively. During the third quarter and the first nine months of fiscal year 2009, unused line fees and amortized debt issuance costs totaled approximately $70,000, and $209,000, respectively. These costs are being amortized over the term of the credit facility.

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Provision for income taxes

	Three Months Ended (In thousands)				Nine Months Ended (In thousands)			
	September 30, 2010	2009	Variance $ s	Variance %	September 30, 2010	2009	Variance $ s	Variance %
Provision for income taxes	$ 4,269	$ 395	$ 3,874	981%	$ 2,518	$ 1,951	$ 567	29%
% of total revenue	11%	1%			2%	2%		

For the three months ended September 30, 2010 and September 30, 2009, we recorded an income tax provision of approximately $4.3 million and approximately $395,000, respectively. The increase in the income tax provision for the third quarter of fiscal year 2010 as compared to the third quarter of fiscal year 2009 is primarily due higher domestic pretax net income. The higher U.S. pre-tax net income was mainly due to an increase in license revenue during the quarter. In the third quarter of fiscal 2009, there was a tax benefit of approximately $1 million related to the release of liability associated with uncertain tax positions.

For the nine months ended September 30, 2010 and September 30, 2009, we recorded an income tax provision of approximately $2.5 million and approximately $1.9 million, respectively. The increase in the 2010 year-to date income tax provision is due to higher domestic pretax net income. The tax provision for the nine months ended September 30,2010 was reduced by a tax benefit of approximately $1.6 million recognized discretely in the first quarter for the release of a valuation allowance on Canadian deferred tax assets. The change in the valuation allowance was made due to changes in judgments related to the future use of deferred tax assets. The expected utilization of these deferred tax assets changed because of changes in future year income projections and tax planning strategies.

During the three months ended September 30, 2010, the Company decreased its total amount of unrecognized tax benefits by approximately $316,000 due to the expiration of a statute of limitations. The Company recognizes interest and penalties accrued related to unrecognized tax benefits in income tax expense. The Company does not expect that its unrecognized tax benefits would materially change in the next twelve months.

Liquidity and Capital Resources

(in thousands)

	As of September 30, 2010	As of December 31, 2009	Change $	Change %
Cash, cash equivalents and investments	$ 73,540	$ 75,531	$ (1,991)	(3)%
Working capital	$ 46,093	$ 54,114	$ (8,021)	(15)%
Note payable	$ 40,000	$ 30,000	$ 10,000	33%
Stockholders equity and non-controlling interest	$ 85,672	$ 76,019	$ 9,653	13%

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

Cash flows from operating activities: Our largest source of operating cash flows is cash collections from our customers following the purchase and renewal of their software license updates and product support agreements. Payments from customers for software license updates and product support agreements are generally received near the beginning of the contracts terms, which are generally one year in length. We also generate significant cash from new software license sales and, to a lesser extent, consulting. Our primary uses of cash from operating activities are for personnel related expenditures as well as payments related to taxes and leased facilities. Net cash provided by operating activities increased in the first nine months of fiscal 2010 compared to the same period last year due mainly to the collection of $11 million from IBM in the third quarter of fiscal 2010 and collection of approximately $2.6 million from Oracle in the second and third quarter of fiscal 2010, offset by increased legal fees as reflected in our lower net income and increased accrued liabilities. Days sales outstanding (DSO) is calculated based on revenue for the most recent quarter and accounts receivable as of the balance sheet date. DSO decreased by 50 days from 98 days at

December 31, 2009 to 48 days at September 30, 2010.

Cash flows from investing activities: The changes in cash flows from investing activities primarily relate to acquisitions and the timing of purchases, maturities and sales of our investments in marketable securities. We also use cash to invest in capital and other assets to support our growth. Cash used in investing activities was $26.6 million for the nine months ended September 30, 2010 compared to approximately $9.4 million used during the same period in fiscal 2009. The primary driver for the increase in cash used during the first nine months of fiscal year 2010 was the acquisition of Xenos which resulted in a net cash payment of approximately $27.3 million. This cash payment is net of approximately $6.9 million of acquired cash from Xenos. We funded the acquisition by using a combination of approximately $24.3 million of Company s cash and investment reserves and borrowed $10 million under our existing credit facility with Wells Fargo Foothill (WFF). The remaining increase in cash used primarily relates to the timing of purchases and maturities of marketable securities.

Cash flows from financing activities: Cash provided by financing activities was $5.1 million for the nine months ended September 30, 2010 compared to $258,000 provided by financing activities during the same period in fiscal year 2009. During the first nine months of 2010, we borrowed $10 million under our existing credit facility with Wells Fargo Foothill (WFF) to partially fund the acquisition of Xenos which was completed in February 2010. Offsetting these proceeds were approximately $10 million in payments associated with our share buyback program that resulted in repurchase of 2,042,612 shares of Actuate stock during first nine months of 2010. Finally, proceeds from exercise of employee stock options, offset by associated tax benefits accounted for the remainder of the net proceeds from financing activities for the first nine months of 2010.

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 ITprojects. We currently do not foresee material cash outlays associated with capital projects during the remainder of fiscal year 2010 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. During the first quarter of 2010, we borrowed an additional $10 million of funds available through this credit facility to complete the acquisition of Xenos which was completed on February 1, 2010. As of September 30, 2010, the Company owed $40.0 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 $1.1 million. Of these total costs, approximately $1.0 million was paid as of September 30, 2010. The remaining balance is comprised of a commitment fee totaling $125,000 that is due and payable on the third anniversary, in November of fiscal year 2011. These costs are being capitalized and amortized over four years in the Company s Consolidated Balance Sheet at September 30, 2010 as current assets if amortized within one year or non-current assets if amortized beyond one year.

As of September 30, 2010, the remaining balance available under the revolving credit facility was approximately $10 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 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, 2010, the Company was able to meet the 80% test as well as the $10 million minimum 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 $1.0 million of interest expense primarily associated with the credit facility in the first nine months of fiscal year 2010 compared with $769,000 of interest expense incurred during the first nine months of fiscal year 2009. The increase in the interest expense in fiscal 2010 was due to $10 million in additional borrowings under the credit facility which was used to fund the acquisition of Xenos in February 2010.

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, 2010. 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.

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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.

We hold our cash, cash equivalents and investments primarily in the United States, Canada, Switzerland, and Singapore. As of September 30, 2010, we held an aggregate of approximately $50 million in cash, cash equivalents and short-term investments in the North America and an aggregate of $23.5 million in foreign accounts. Funds in foreign accounts are primarily generated from revenue outside North America and are used to fund overseas operations.

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

Contractual Obligations and Commercial Commitments

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, 2010, the deferred rent liability balance totaled approximately $692,000 and this balance declines through 2012 when contractual cash payments exceed the straight-line lease expense. Of this total deferred rent liability balance, approximately $357,000 was classified under the current accrued liabilities section of our consolidated balance sheet with the remaining portion of approximately $335,000 classified under other long term liabilities section of our consolidated balance sheet at September 30, 2010. 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, 2010.

The following table summarizes our contractual obligations as of September 30, 2010 (in thousands):

	Total	Less than 1 year	1 3 years	3 5 years	Thereafter
Obligations:					
Operating leases (1)	$ 10,402	$ 5,113	$ 4,285	$ 1,004	$
Interest and loan obligations (2)	43,302	1,406	41,896		
Obligations for uncertain tax positions (3)	356		356		
Total	$ 54,060	$ 6,519	$ 46,537	$ 1,004	$

	Total				Thereafter

		Less than 1 year	1 3 years	3 5 years	
Contractual sublease proceeds	$ 927	$ 927	$	$	$

(1) Our future contractual obligations include minimum lease payments under operating leases at September 30, 2010. Of the remaining future minimum lease payments, approximately $2.1 million is included in restructuring liabilities on the Company s Consolidated Balance Sheet as of September 30, 2010. Contractual sublease proceeds associated with these minimum lease payments total approximately $927,000 and are also included in restructuring liabilities on the Company s Consolidated Balance Sheet as of September 30, 2010.

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(2) Estimated interest, commitment fees and principal related to the revolving line of Credit Agreement with Wells Fargo Capital Finance.

(3) 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 the Consolidated Financial Statements of our Form 10-K for fiscal year 2009 filed with the SEC on March 10, 2010.

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 2010 and 2009 we derived 19% and 22%, respectively, of our total revenues from sales outside of North America. We face exposure to market risk on these receivables with respect to fluctuations in the relative value of currencies. Our international revenues and expenses are denominated in foreign currencies, principally the Euro and the British Pound Sterling. The functional currency of each of our foreign subsidiaries is the local currency. 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 $1.2 million for the first nine months of fiscal 2010 compared to losses of approximately $561,000 during the same period last year.

We performed a sensitivity analysis on the net monetary accounts subject to revaluation that are held primarily by our international subsidiaries. We used the following steps to determine the approximate impact of currency exchange rate fluctuations:

Identified material net monetary assets held in non-functional currencies. These primarily consist of the Euro, British Pound, Canadian Dollar, and the U.S. Dollar-based net assets held by our international subsidiaries.

Applied hypothetical changes in exchange rates to these net monetary balances held by each subsidiary as identified above. The result was a hypothetical revaluation gain or loss in the subsidiary s functional currency.

We then translated the revaluation result as described above to U.S. Dollars using the latest quarter average exchange rate. This resulted in hypothetical revaluation gains or losses before income taxes. These hypothetical results are summarized in the table below as of September 30, 2010:

Annual change in currency exchange (in thousands)					
-15%	**-10%**	**-5%**	**+5%**	**+10%**	**+15%**
$ (1,650)	$ (1,100)	$ (550)	$ 550	$ 1,100	$ 1,650

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 primarily in highly liquid and high quality debt securities. Due to the nature of our investments, we believe that there is limited risk exposure.

We also have a $40.0 million loan with Wells Fargo Foothill which we used to partially fund our tender offer in the fourth quarter of 2008 and our acquisition of Xenos in the first quarter of 2010. We performed a sensitivity analysis on the outstanding portion of this loan as of September 30, 2010. 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, 2010:

Annual change in interest expense (in thousands)					
-1.5%	**-1.0%**	**-0.5%**	**+0.5%**	**+1.0%**	**+1.5%**
(600)	(400)	(200)	200	400	600

Credit Risk. Financial instruments that potentially subject us to concentrations of credit risk consist primarily of cash and cash equivalents, investments in marketable securities, and trade accounts receivable. We have policies that limit investments in investment grade securities and the amount of credit exposure to any one issuer.

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We sell primarily to customers in the financial services industry, predominantly in the United States and Europe. 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, our products which would have a material adverse effect on the our business, financial condition and results of operations. There was one customer that accounted for more than 10% of total sales in the third quarter and first nine months of fiscal 2010.

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. 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.

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.

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ITEM 4. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures

The SEC defines the term disclosure controls and procedures to mean a company s controls and other procedures that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in the SEC s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Our Chief Executive Officer and our Chief Financial Officer have concluded, based on an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act) by our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, that our disclosure controls and procedures were effective as of the end of the period covered by this report.

(b) Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the nine months ended September 30, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(c) Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal controls will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected.

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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-Q, 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 Rich Information Applications, Performance Management, 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 cost, 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;

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- Budgeting cycles of its customers;
- Failure to successfully manage acquisitions;
- Defects in 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 where it focuses 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 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.

OUR DEBT COVENANTS RESTRICT OUR FINANCIAL AND OPERATIONAL FLEXIBILITY.

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

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. On February 1, 2010, the Company completed a tender offer for Xenos Group Inc. (Xenos).

Generally, acquisitions (including that of Xenos) 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 specifically in the case of Xenos the loss of recurring revenue from multiple subsidiaries of one large multi-national organization or the ability to sell and support certain third party software.

- 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.

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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, Rich Internet Applications 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 19%, 22% and 29% for the nine months of fiscal years 2010, 2009 and 2008, 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 2010. If it is not successful in expanding international operations in a timely and cost-effective manner, the Company s business, operating results and financial condition could be materially harmed.

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

To date, the Company has sold its products principally through its direct sales force, as well as through indirect sales channels, such as its OEMs, resellers and systems integrators. The Company s revenues from license fees resulting from sales through indirect channel partners were approximately 58%, 31%, and 32% of total revenues from license fees for the nine months of fiscal years 2010, 2009 and 2008, 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. Xenos business in the United Kingdom relies on the sale and support of third party software as a component of its business. 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.

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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 Rich Internet Applications 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 Rich Information Applications products;
- Competition from the IT departments of current or potential customers that may develop scalable Business Intelligence, Performance Management and Rich Information Applications 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 Rich Information Applications 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 Rich Information Applications 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 Rich Internet Applications 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.

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IF THE MARKET FOR BUSINESS INTELLIGENCE, RICH INTERNET APPLICATIONS 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 Rich Information Applications 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 Rich Internet Applications 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 Rich Information Applications 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 Rich Information Applications 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 the Company 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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THE RENEWAL OF MAINTENANCE REVENUE ON OUR OLDER SOFTWARE SALES MAY DECLINE

The Company has historically experienced a high maintenance retention rate across its various product lines. As certain of the Company s products age, these retention rates may not be sustained unless the Company is successful in providing its customers with more advanced functionality and the levels of support that they require.

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.

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

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

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

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

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

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

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

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

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THE COMPANY S INTERNATIONAL OPERATIONS ARE SUBJECT TO SIGNIFICANT RISKS.

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

- Economic and political instability, including war and terrorism or the threat of war and terrorism;
- Difficulty of managing an organization spread across many countries;
- Multiple and conflicting tax laws and regulations;
- Costs of localizing products for foreign countries;
- Difficulty in hiring employees and difficulties and high costs associated with terminating employees and restructuring operations in foreign countries;
- Trade laws and business practices favoring local competition;
- Dependence on local vendors;
- Increasing dependence on resellers in certain geographies;
- Compliance with multiple, conflicting and changing government laws and regulations;
- Weaker intellectual property protection in foreign countries and potential loss of proprietary information due to piracy or misappropriation;
- Longer sales cycles;
- Import and export restrictions and tariffs;
- Difficulties in staffing and managing foreign operations;
- The significant presence of some of our competitors in certain international markets;

Greater difficulty or delay in accounts receivable collection; and

Foreign currency exchange rate fluctuations.

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

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

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

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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 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.

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

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

THE COMPANY MAY BE SUBJECT TO PRODUCT LIABILITY CLAIMS.

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;

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- 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, Rich Information Applications 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 the Annual Meeting of Stockholder. 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.

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 (WFF) 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. On February 1, 2010 we borrowed an additional $10 million under the Credit Agreement to fund the acquisition of Xenos. The acquisition was valued at approximately $34.3 million and was funded using a combination of cash reserves and borrowings available under the Credit Agreement. At September 30, 2010, our outstanding debt under the Credit Agreement was $40 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 million, 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.

Item 6. Exhibits

1.01	Confidential Agreement and Release between Oracle America, Inc. and Actuate Corporation dated June 14, 2010
1.01	Memorandum of Understanding between Actuate Corporation and International Business Machines Corporation and MRO Software, Inc. dated September 16, 2010
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 5, 2010

By: /s/ DANIEL A. GAUDREAU

Daniel A. Gaudreau
Senior Vice President,
Operations and Chief Financial Officer
(Principal Financial and Accounting Officer)

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