

ACTUATE CORP  
Form 10-Q  
November 09, 2005  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

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

For the quarterly period ended September 30, 2005

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

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**Actuate Corporation**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State of incorporation)

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

**701 Gateway Boulevard**  
**South San Francisco, California 94080**  
**(650) 837-2000**

(Address, including zip code, and telephone number,  
including area code, of Registrant's principal executive offices)

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

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

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

| <u>Title of Class</u>                    | <u>Outstanding as of September 30, 2005</u> |
|--|---|
| Common Stock, par value \$.001 per share | 60,292,172                                  |

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**Actuate Corporation**

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|  | <b>September 30,<br/>2005</b> | <b>December 31,<br/>2004</b> |
|--|-------------------------------|------------------------------|
|  | <u>          </u>             | <u>          </u>            |
| <b>ASSETS</b>  |                               |                              |
| Current assets:  |                               |                              |
| Cash and cash equivalents  | \$ 12,266                     | \$ 7,341                     |
| Short-term investments   | 38,540                        | 39,932                       |
| Accounts receivable, net of allowance of \$1,319 and \$1,489 at September 30, 2005 and December 31, 2004, respectively | 20,566                        | 24,776                       |
| Other current assets   | 2,993                         | 2,498                        |
|  | <u>          </u>             | <u>          </u>            |
| Total current assets   | 74,365                        | 74,547                       |
| Property and equipment, net  | 4,756                         | 6,158                        |
| Goodwill   | 20,766                        | 20,766                       |
| Other purchased intangibles, net   | 1,305                         | 3,117                        |
| Other assets   | 696                           | 867                          |
|  | <u>          </u>             | <u>          </u>            |
|  | <u>\$ 101,888</u>             | <u>\$ 105,455</u>            |
| <b>LIABILITIES AND STOCKHOLDERS EQUITY</b>   |                               |                              |
| Current liabilities:   |                               |                              |
| Accounts payable   | \$ 1,733                      | \$ 2,414                     |
| Current portion of restructuring liabilities   | 3,133                         | 3,669                        |
| Accrued compensation   | 4,000                         | 5,244                        |
| Other accrued liabilities  | 2,972                         | 4,996                        |
| Income taxes payable   | 328                           | 539                          |
| Deferred revenue   | 26,352                        | 27,323                       |
|  | <u>          </u>             | <u>          </u>            |
| Total current liabilities  | 38,518                        | 44,185                       |
|  | <u>          </u>             | <u>          </u>            |
| Long-term liabilities:   |                               |                              |
| Deferred rent  | 230                           | 320                          |
| Long-term deferred revenue   | 1,133                         | 1,440                        |
| Restructuring liabilities, less current portion  | 10,834                        | 12,565                       |
|  | <u>          </u>             | <u>          </u>            |
| Total long-term liabilities  | 12,197                        | 14,325                       |

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|   |            |            |
|---|------------|------------|
| 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 67,358,320 and 66,235,200 shares, respectively; outstanding 60,292,172 and 61,871,783 shares, respectively | 60         | 62         |
| Additional paid-in capital  | 108,013    | 104,829    |
| Treasury stock, at cost; 7,066,148 and 4,363,417 shares, respectively   | (17,818)   | (11,616)   |
| Accumulated other comprehensive loss  | (603)      | (389)      |
| Accumulated deficit   | (38,479)   | (45,941)   |
| Stockholders' equity  | 51,173     | 46,945     |
|   | \$ 101,888 | \$ 105,455 |

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<br>Ended<br>September 30, |                  | Nine Months Ended<br>September 30, |               |
|--|--|------------------|------------------------------------|---------------|
|  | 2005                                   | 2004             | 2005                               | 2004          |
| <b>Revenues:</b>                             |  |                  |                                    |               |
| License fees                                 | \$ 8,894                               | \$ 8,017         | \$ 26,647                          | \$ 31,790     |
| Services                                     | 17,951                                 | 15,757           | 50,593                             | 45,502        |
| <b>Total revenues</b>                        | <b>26,845</b>                          | <b>23,774</b>    | <b>77,240</b>                      | <b>77,292</b> |
| <b>Costs and expenses:</b>                   |  |                  |                                    |               |
| Cost of license fees                         | 489                                    | 619              | 1,804                              | 2,549         |
| Cost of services                             | 5,702                                  | 6,019            | 17,271                             | 18,689        |
| Sales and marketing                          | 9,411                                  | 10,085           | 26,564                             | 31,085        |
| Research and development                     | 4,011                                  | 5,132            | 12,370                             | 15,546        |
| General and administrative                   | 2,622                                  | 3,019            | 9,933                              | 8,066         |
| Amortization of other purchased intangibles  | 17                                     | 276              | 487                                | 834           |
| Restructuring charges                        | 4                                      |                  | 751                                | 586           |
| <b>Total costs and expenses</b>              | <b>22,256</b>                          | <b>25,150</b>    | <b>69,180</b>                      | <b>77,355</b> |
| <b>Income (loss) from operations</b>         | <b>4,589</b>                           | <b>(1,376)</b>   | <b>8,060</b>                       | <b>(63)</b>   |
| Interest and other income (expense), net     | 376                                    | (89)             | 909                                | 295           |
| <b>Income (loss) before income taxes</b>     | <b>4,965</b>                           | <b>(1,465)</b>   | <b>8,969</b>                       | <b>232</b>    |
| Provision (benefit) for income taxes         | 1,225                                  | (617)            | 1,507                              | 162           |
| <b>Net income (loss)</b>                     | <b>\$ 3,740</b>                        | <b>\$ (848)</b>  | <b>\$ 7,462</b>                    | <b>\$ 70</b>  |
| <b>Basic net income (loss) per share</b>     | <b>\$ 0.06</b>                         | <b>\$ (0.01)</b> | <b>\$ 0.12</b>                     | <b>\$</b>     |
| Shares used in basic per share calculation   | 60,513                                 | 61,671           | 61,351                             | 61,506        |
| <b>Diluted net income (loss) per share</b>   | <b>\$ 0.06</b>                         | <b>\$ (0.01)</b> | <b>\$ 0.12</b>                     | <b>\$</b>     |
| Shares used in diluted per share calculation | 62,313                                 | 61,671           | 63,366                             | 65,444        |

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



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(in thousands, unaudited)

|   | Nine Months Ended |                  |
|---|-------------------|------------------|
|   | September 30,     |                  |
|   | 2005              | 2004             |
| <b>Operating activities</b>   |                   |                  |
| Net income  | \$ 7,462          | \$ 70            |
| Adjustments to reconcile net income to net cash provided by operating activities: |                   |                  |
| Amortization of other purchased intangibles                                       | 1,286             | 1,983            |
| Depreciation  | 1,538             | 1,730            |
| Tax benefit from exercise of stock options  | 1,513             |                  |
| Unrealized investment loss  | 301               |                  |
| Changes in operating assets and liabilities:                                      |                   |                  |
| Accounts receivable   | 4,210             | 2,796            |
| Other current assets  | (495)             | 286              |
| Accounts payable  | (153)             | (127)            |
| Accrued compensation  | (1,244)           | (702)            |
| Other accrued liabilities   | (2,024)           | (55)             |
| Income taxes payable  | (211)             | (44)             |
| Deferred rent liabilities   | (90)              |                  |
| Restructuring liabilities   | (2,267)           | (1,424)          |
| Deferred revenue  | (1,278)           | 1,154            |
| Net cash provided by operating activities   | <u>8,548</u>      | <u>5,667</u>     |
| <b>Investing activities</b>   |                   |                  |
| Purchases of property and equipment   | (136)             | (2,891)          |
| Proceeds from maturity of short-term investments                                  | 60,099            | 40,553           |
| Purchases of short-term investments   | (58,764)          | (27,058)         |
| Change in other assets  | (130)             | 380              |
| Net cash provided by investing activities   | <u>1,069</u>      | <u>10,984</u>    |
| <b>Financing activities</b>   |                   |                  |
| Proceeds from issuance of common stock  | 1,667             | 2,007            |
| Stock repurchases   | (6,202)           | (2,689)          |
| Net cash used in financing activities   | <u>(4,535)</u>    | <u>(682)</u>     |
| Net increase in cash and cash equivalents   | 5,082             | 15,969           |
| Effect of exchange rates on cash and cash equivalents                             | (157)             | 184              |
| Cash and cash equivalents at the beginning of the period                          | 7,341             | 8,950            |
| Cash and cash equivalents at the end of the period                                | <u>\$ 12,266</u>  | <u>\$ 25,103</u> |

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

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**ACTUATE CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(UNAUDITED)**

**1. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying interim condensed consolidated financial statements of Actuate Corporation ( Actuate , the Company , We or Our ) are unaudited and include all normal recurring adjustments and non-recurring adjustments which we believe to be necessary for the fair presentation of the financial position, results of operations, and changes in cash flows for the periods presented. The preparation of the financial statements in conformity with generally accepted accounting principles requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Despite our best effort to establish good faith estimates and assumptions, actual results may differ.

The interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2004 as filed with the Securities and Exchange Commission on March 16, 2005 and as amended in our Form 10-K/A which was filed on May 2, 2005. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission. Interim results of operations for the nine months ended September 30, 2005 are not necessarily indicative of operating results for any other future interim period or the full fiscal year.

***Revenue Recognition***

We generate revenues from sales of software licenses and related services. We receive software license revenues from licensing our products directly to end-users and indirectly through resellers, system integrators and original equipment manufacturers ( OEMs ). We receive service revenues from maintenance contracts, consulting services and training that we perform for customers.

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



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We enter into reseller and distributor arrangements that typically give such distributors and resellers the right to distribute our products to end-users headquartered in specified territories. We recognize license revenues from arrangements with U.S. resellers and distributors when there is persuasive evidence of an arrangement with the reseller or distributor, the product has been shipped, the fees are fixed or determinable and collectibility is probable. We recognize license fee 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, we defer revenues until the end-user has been identified and cash has been received. In some instances there is a timing difference between when our reseller completes its sale to the end-user and the period in which we receive the documentation required for revenue recognition. Because we delay revenue recognition until the required documentation is obtained, we may recognize revenue in a period subsequent to the period in which the reseller completes the sale to its end-user.

We also enter into OEM arrangements that provide for license fees based on the bundling or embedding of our products with the OEMs products. These arrangements generally provide for fixed, irrevocable royalty payments. We recognize license fee revenues from U.S. OEM arrangements when a license agreement has been signed by both parties, the product has been shipped, there are no unusual uncertainties surrounding the product acceptance, the fees are fixed or determinable, collectibility is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement. For sales through international OEMs, we defer revenue until we receive a royalty report or other evidence of sell-through from such OEM assuming all other revenue recognition criteria have been met. As discussed above, there may be a timing difference between the period in which our OEM completes the sale to its end-user, and the period in which we recognize the revenue.

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

We recognize maintenance revenues, which consist of fees for ongoing support and unspecified product updates, ratably over the term of the contract, which is typically one year. Consulting revenues are primarily related to implementation and configuration and are typically charged on a time and materials basis. Training revenues are generated from classes offered at our headquarters and customer locations. Revenues from consulting and training services are recognized as the services are performed. When a contract includes both license and service elements, the license fee is recognized on delivery of the software and when 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.

### ***Stock-Based Compensation***

We have not adopted the recognition provisions of Statement of Financial Accounting Standards (SFAS) No. 123 (SFAS 123), *Accounting for Stock-Based Compensation* as amended by SFAS 148, *Accounting for Stock-Based Compensation-Transition and Disclosure* and continue to account for employee stock-based compensation under the intrinsic value method of Accounting Principles Board Opinion 25, *Accounting for Stock Issued to Employees*, (APB 25) and related interpretations. Accordingly, no compensation expense is recognized for stock options issued to employees since the strike price equals the market price on the date of grant for all options issued. Stock option grants to non-employees are accounted for using the fair value method under SFAS 123.

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The fair value of the options granted under our Stock Option Plans and stock issued under our Employee Stock Purchase Plan in all periods was estimated using the Black-Scholes method, with the following weighted-average assumptions:

|  | <b>Three Months Ended<br/>September 30,</b> |             | <b>Nine Months Ended<br/>September 30,</b> |             |
|--|---|-------------|--|-------------|
|  | <b>2005</b>                                 | <b>2004</b> | <b>2005</b>                                | <b>2004</b> |
| Dividend yield                                       | 0.00%                                       | 0.00%       | 0.00%                                      | 0.00%       |
| Risk-free interest rate under option plan            | 4.13%                                       | 2.75%       | 3.46%                                      | 2.75%       |
| Risk-free interest rate under purchase plan          | 3.87%                                       | 3.03%       | 3.41%                                      | 3.03%       |
| Expected volatility under option plan                | 78.7%                                       | 106.94%     | 96.16%                                     | 106.94%     |
| Expected volatility under purchase plan              | 45.19%                                      | 97.38%      | 45.83%                                     | 97.38%      |
| Expected life of grants under the Stock Option Plans | 3 years                                     | 3 years     | 3 years                                    | 3 years     |
| Expected life of grants under the Purchase Plan      | 0.5 year                                    | 0.5 year    | 0.5 year                                   | 0.5 year    |

The weighted average fair value of options outstanding as of September 30, 2005 and 2004 were \$1.82 and \$2.42 per share, respectively.

The following table presents the calculation of pro forma basic and diluted net income (loss) per share (in thousands, except per share amounts):

|  | <b>Three Months Ended<br/>September 30,</b> |             | <b>Nine Months Ended<br/>September 30,</b> |             |
|--|---|-------------|--|-------------|
|  | <b>2005</b>                                 | <b>2004</b> | <b>2005</b>                                | <b>2004</b> |
| Net income (loss) - as reported  | \$ 3,740                                    | \$ (848)    | \$ 7,462                                   | \$ 70       |
| Less: Stock-based employee compensation expense determined under the fair value method for all awards (net of tax) | (1,476)                                     | (2,393)     | (4,368)                                    | (7,959)     |
| Net income (loss) pro forma  | \$ 2,264                                    | \$ (3,241)  | \$ 3,094                                   | \$ (7,889)  |
| Net income (loss) per share as reported:   |   |             |  |             |
| Basic  | \$ 0.06                                     | \$ (0.01)   | \$ 0.12                                    | \$ 0.00     |
| Diluted  | \$ 0.06                                     | \$ (0.01)   | \$ 0.12                                    | \$ 0.00     |
| Net income (loss) per share pro forma:   |   |             |  |             |
| Basic  | \$ 0.04                                     | \$ (0.05)   | \$ 0.05                                    | \$ (0.13)   |
| Diluted  | \$ 0.04                                     | \$ (0.05)   | \$ 0.05                                    | \$ (0.13)   |

The pro forma amounts disclosed above may not be representative of the effects on pro forma results in future years as options vest over several years, additional awards may be granted and awards may be cancelled in subsequent years.

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In December 2004, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payments* (SFAS 123R), which, under the current timetable for effectiveness, Actuate will be required to follow beginning in its first quarter of fiscal 2006. SFAS 123R will result in the recognition of substantial compensation expense relating to the Company's employee stock options and employee stock purchase plans. As noted above,

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currently the Company generally does not recognize any compensation expense related to stock option grants the Company issues under its stock option plans or related to the discounts the Company provides under its employee stock purchase plans. Under the new rules, the Company will be required to adopt a fair-value-based method for measuring the compensation expense related to employee stock awards. The Company is evaluating the requirements of SFAS 123R and expects that the adoption of SFAS 123R will have a material impact on the Company's consolidated results of operations and earnings per share. However, we have not yet determined the method of adoption or the effect of adopting SFAS 123R and have not determined whether the adoption will result in amounts that are different than the current pro forma disclosures under SFAS 123. The table above provides the pro forma net income (loss) and earnings (loss) per share as if the Company had used a fair-value-based method similar to one of the methods permitted under SFAS 123R to measure the compensation expense for employee stock awards during the three and nine-month periods ended September 30, 2005 and 2004.

***Net Income (Loss) Per Share***

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

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

|   | <b>Three Months Ended<br/>September 30,</b> |             | <b>Nine Months Ended<br/>September 30,</b> |             |
|---|---|-------------|--|-------------|
|   | <b>2005</b>                                 | <b>2004</b> | <b>2005</b>                                | <b>2004</b> |
| Weighted-average common shares outstanding  | 60,513                                      | 61,671      | 61,351                                     | 61,506      |
| Weighted-average dilutive stock options outstanding under the treasury stock method | 1,800                                       |             | 2,015                                      | 3,938       |
| Weighted-average common shares used in computing diluted net income per share       | 62,313                                      | 61,671      | 63,366                                     | 65,444      |

Under the treasury stock method, stock options with exercise prices exceeding the average share price of our common stock during the applicable period are excluded from the diluted earnings per share computation. The number of shares excluded from the calculation of diluted net income per share was 11,310,843 and 11,390,971 in the three and nine months ended September 30, 2005, respectively. The weighted-average number of shares excluded from the calculation of diluted net income (loss) per share was 20,224,737 and 8,006,743 in the three and nine months ended September 30, 2004, respectively. These anti-dilutive options could be dilutive in future periods.

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Comprehensive income (loss) includes foreign currency translation adjustments and other unrealized gains (losses) on short-term investments that are excluded from net income (loss) and are reflected as changes in equity. A summary of comprehensive income is summarized as follows (in thousands):

|  | Three Months Ended |                 | Nine Months Ended |               |
|--|--------------------|-----------------|-------------------|---------------|
|  | September 30,      |                 | September 30,     |               |
|  | 2005               | 2004            | 2005              | 2004          |
| Net income (loss)  | \$ 3,740           | \$ (848)        | \$ 7,462          | \$ 70         |
| Foreign currency translation adjustment, net of tax effect                 | (77)               | 59              | (98)              | 114           |
| Unrealized gain (loss) on available-for-sale-securities, net of tax effect | (31)               | 11              | (35)              | (38)          |
| <b>Comprehensive income (loss)</b>   | <b>\$ 3,632</b>    | <b>\$ (778)</b> | <b>\$ 7,329</b>   | <b>\$ 146</b> |

The net tax effect on foreign currency translation and unrealized gain (loss) on short-term investments is \$66,000 and \$81,000 for the three and nine months ended September 30, 2005, respectively. The net tax effect on foreign currency translation and unrealized gain (loss) on short-term investments is \$44,000 and \$45,000 for the three and nine months ended September 30, 2004, respectively.

**Reclassifications**

We have reclassified a portion of our deferred revenue and deferred rent as of December 31, 2004 to long-term liabilities to conform with the current period presentation. The reclassifications had no impact on the results of operations or stockholders' equity for the periods presented.

**Recent Accounting Pronouncements**

In June 2005, the Emerging Issues Task Force (EITF) issued No. 05-06 *Determining the Amortization Period for Leasehold Improvements* (EITF 05-6). The pronouncement requires that leasehold improvements acquired in a business combination or purchase, significantly after the inception of the lease, be amortized over the lesser of the useful life of the asset or the lease term that includes reasonably assured lease renewals as determined on the date of the acquisition of the leasehold improvement. This pronouncement should be applied prospectively effective beginning on January 1, 2006. We do not expect the adoption of EITF 05-6 will have material impact on our financial statements.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections* (SFAS 154) which replaces APB Opinion No. 20, *Accounting Changes* and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements*. An Amendment of APB Opinion No. 28. SFAS 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it

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is not practicable to do so. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005 and is required to be adopted by the Company in the first quarter of fiscal 2006. Although the Company will continue to evaluate the application of SFAS 154, the Company does not currently believe adoption will have a material impact on its results of operations or financial position.

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In March 2005, the FASB issued FASB Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations* (FIN 47). FIN 47 clarifies that the term conditional asset retirement obligation, as used in SFAS No. 143, *Accounting for Asset Retirement Obligations*, refers to a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement are conditional on a future event that may or may not be within the control of the entity. The obligation to perform the asset retirement activity is unconditional even though uncertainty exists about the timing and/or method of settlement. Uncertainty about the timing and/or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective no later than the end of fiscal years ending after December 15, 2005. The Company does not expect the adoption of this statement to have a material impact on its results of operations or financial position.

On March 29, 2005, the SEC issued Staff Accounting Bulletin No. 107 (SAB 107) regarding the Staff's interpretation of Share-Based Payments. This interpretation expresses the views of the staff regarding the interaction between SFAS 123(R) and certain SEC rules and regulations and provides the staff's views regarding the valuation of share-based payment arrangements for public companies. In particular, this SAB provides guidance related to share-based payment transactions with non-employees, the transition from nonpublic to public entity status, valuation methods, the accounting for certain redeemable financial instruments issued under share-based payment arrangements, the classification of compensation expense, non-GAAP financial measures, first-time adoption of SFAS 123(R) in an interim period, capitalization of compensation cost related to share-based payment arrangements, the accounting for income tax effects of share-based payment arrangements upon adoption of SFAS 123(R), the modification of employee share options prior to adoption of Statement 123(R) and disclosures in Management's Discussion and Analysis, or MD&A, subsequent to adoption of SFAS 123(R). The Company will adopt SAB 107 in connection with its adoption of SFAS 123(R), which is likely to have a material impact on our consolidated financial position, results of operations and cash flows.

## **2. Restructuring Charges**

In response to deteriorating global economic conditions, we committed to a facility exit plan in the third quarter of fiscal year 2002. The primary goal of this restructuring plan was to reduce costs and improve operating efficiencies in order to adjust to the then existing business and economic environment. Specifically, it was our decision, under this plan, to eliminate excess facility capacity in light of our revised facility requirements. As a result of this restructuring plan, we recorded an initial charge of \$27.1 million (consisting of a \$24.8 million idle facility charge and a \$2.3 million workforce reduction charge) during fiscal year 2002.

The facility exit charge was calculated using management's best estimates and included \$21.5 million of estimated future obligations for non-cancelable lease payments (net of \$10.2 million of estimated sublease income) and estimated costs associated with subleasing the property (e.g., leasing commissions). The facility had been idle since the leasing term began in May 2001 and we formally made a decision to exit this facility during the third quarter of fiscal year 2002. As of September 30, 2005, \$10.8 million of lease exit costs, net of anticipated sublease income of \$8.6 million, remain accrued and will be fully utilized by fiscal year 2011. In calculating the facility exit charge, certain assumptions were made. We reviewed our assumptions underlying the idle facilities reserve during the

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third quarter of fiscal year 2005. This review was triggered by the extension of our sublease with the existing tenant that was signed in September of 2005. Some of the assumptions that were previously asserted changed and, accordingly, we revised and lowered the estimated exit costs by approximately \$304,000. Actual future cash requirements may differ materially from the remaining accrual at September 30, 2005, particularly if the actual sublease income is significantly different from current estimates or if we are unsuccessful in our efforts to sublease the facility for the entire term of the lease (through fiscal year 2011).

In the first quarter of 2004 we recognized \$586,000 in severance, benefit and related legal costs when we initiated a restructuring of our French operations to size the operation to meet the expected business and economic environment for our products in France. This restructuring resulted in a workforce reduction of five total personnel.

In the fourth quarter of 2004, we implemented a second restructuring program. This was to further align our cost structure with future revenue expectations. Under this restructuring program, we recognized restructuring expenses of approximately \$569,000, \$178,000 and \$308,000 in the first, second and third quarters of fiscal year 2005, respectively. These costs were entirely related to the restructuring of our French operation and primarily consisted of charges related to employee matters and estimated settlement costs stemming from employee litigation. These costs were partially offset by reductions in the France lease loss accrual due to an early termination of the facility lease.

The following table summarizes the restructuring accrual activity during the nine months ended September 30, 2005 (in thousands):

|   | <b>Severance<br/>&amp; Benefits</b> | <b>Facility<br/>Related</b> | <b>Total</b>      |
|---|-------------------------------------|-----------------------------|-------------------|
|   | <u>          </u>                   | <u>          </u>           | <u>          </u> |
| Balance at December 31, 2004                      | \$ 1,269                            | \$ 14,965                   | \$ 16,234         |
| Restructuring charge in Q1                        | 147                                 | 422                         | 569               |
| Restructuring charge in Q2                        | 283                                 | (105)                       | 178               |
| Restructuring charge in Q3                        | 308                                 | (304)                       | 4                 |
| Cash payments, net of rents collected on sublease | (1,262)                             | (1,593)                     | (2,855)           |
| Changes in estimate (Q1 to Q3)                    | (104)                               | (59)                        | (163)             |
|   | <u>          </u>                   | <u>          </u>           | <u>          </u> |
|   | 641                                 | 13,326                      | 13,967            |
| Less: current portion                             | (641)                               | (2,492)                     | (3,133)           |
|   | <u>          </u>                   | <u>          </u>           | <u>          </u> |
| Long-term portion at September 30, 2005           | \$                                  | \$ 10,834                   | \$ 10,834         |
|   | <u>          </u>                   | <u>          </u>           | <u>          </u> |

**3. Income Taxes**

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date.



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The tax provision (benefit) for the three months and nine months ended September 30, 2004 and September 30, 2005 consists of federal, state and foreign income taxes and was computed based on the annual effective tax rates applicable to such operations.

On October 22, 2004, the American Jobs Creation Act of 2004 ( Jobs Act ) was enacted. Among other provisions, the Jobs Act provides for a deduction for income from qualified domestic production activities phased in from 2005 to 2010, and a temporary incentive for U.S. corporations to repatriate accumulated income earned abroad. Actuate has determined the impact of the deduction for domestic production activities will have an immaterial impact on the provision for income taxes for 2005 and does not plan to repatriate foreign earnings under the Jobs Act.

**4. Geographic Information**

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

|                         | <b>Three Months Ended</b> |                  | <b>Nine Months Ended</b> |                  |
|-------------------------|---------------------------|------------------|--------------------------|------------------|
|                         | <b>September 30,</b>      |                  | <b>September 30,</b>     |                  |
|                         | <b>2005</b>               | <b>2004</b>      | <b>2005</b>              | <b>2004</b>      |
| Revenues:               |                           |                  |                          |                  |
| North America           | \$ 20,815                 | \$ 18,137        | \$ 59,736                | \$ 60,000        |
| Europe                  | 4,561                     | 4,475            | 13,858                   | 13,224           |
| Asia Pacific and others | 1,469                     | 1,162            | 3,646                    | 4,068            |
|                         | <b>\$ 26,845</b>          | <b>\$ 23,774</b> | <b>\$ 77,240</b>         | <b>\$ 77,292</b> |

As of September 30, 2005, we operated solely in one segment, which is the development, marketing and support of the Actuate Enterprise Reporting Application Platform. There were no customers that accounted for more than 10% of total revenues in the three or nine months ended September 30, 2005 or 2004.

**Table of Contents****5. Other Purchased Intangible Assets**

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

|                        | September 30, 2005    |                          |   |                 | December 31, 2004     |                          |                 |
|------------------------|-----------------------|--------------------------|---|-----------------|-----------------------|--------------------------|-----------------|
|                        | Gross Carrying Amount | Accumulated Amortization | Adjustment to Purchase Price Allocation | Net Balance     | Gross Carrying Amount | Accumulated Amortization | Net Balance     |
| Customer lists         | \$ 10,600             | \$ (10,600)              | \$                                      | \$              | \$ 10,600             | \$ (10,396)              | \$ 204          |
| Workforce              | 408                   | (408)                    |   |                 | 408                   | (289)                    | 119             |
| Purchased technologies | 6,767                 | (4,935)                  | (527)                                   | 1,305           | 6,767                 | (4,136)                  | 2,631           |
| Non-compete agreements | 1,030                 | (1,030)                  |   |                 | 1,030                 | (938)                    | 92              |
| Trademark              | 700                   | (700)                    |   |                 | 700                   | (629)                    | 71              |
|                        | <u>\$ 19,505</u>      | <u>\$ (17,673)</u>       | <u>\$ (527)</u>                         | <u>\$ 1,305</u> | <u>\$ 19,505</u>      | <u>\$ (16,388)</u>       | <u>\$ 3,117</u> |

For the third quarter of fiscal 2005 and 2004, amortization expense associated with the amortization of purchased technologies was approximately \$115,000 and \$383,000, respectively. For the nine months ended September 30, 2005 and 2004, amortization expense associated with the amortization of purchased technologies was approximately \$799,000 and \$1.1 million, respectively. The amortization of these costs is classified as cost of license fees in the condensed consolidated statements of operations. Amortization of all other intangibles (excluding purchased technologies) is classified as amortization of other purchased intangibles on the condensed consolidated statements of operations. During the second quarter of fiscal year 2005, we offset approximately \$527,000 of accrued liabilities from our purchase of Nimble Technology against purchased technologies as the contingencies that gave rise to the original accrued liability amounts at the time of acquisition were settled for an amount lower than originally estimated. Further, as there was no goodwill associated with the Nimble acquisition, the reduction of accrued liabilities resulted in a decrease to unamortized purchased technologies during the second quarter of fiscal year 2005.

The following table presents the estimated future amortization of Purchased Technology (in thousands).

|                          | Purchased Technology |
|--------------------------|----------------------|
| 2005 (remainder of year) | \$ 115               |
| 2006                     | 461                  |
| 2007                     | 461                  |
| 2008                     | 268                  |
|                          | <u>\$ 1,305</u>      |

**6. 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.

**Table of Contents***Commitments & Contingencies*

In April 2005, a minority shareholder of Actuate Japan notified us that it wishes to exercise its right to put its equity interest in Actuate Japan. The minority shareholder of Actuate Japan exercised its right on October 24, 2005 resulting in payment of \$366,000 by Actuate.

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

As of September 30, 2005, letters of credit were issued on our behalf totaling \$1.8 million to secure our lease obligations relating to our leased facilities. We do not have any other guarantees. Aggregate minimum contractual lease commitments under all operating leases are as follows (in thousands):

| Fiscal Year              | Future<br>minimum<br>lease<br>payment | Contractual<br>sublease<br>income | Net future<br>minimum<br>lease<br>payments |
|--------------------------|---------------------------------------|-----------------------------------|--|
| 2005 (remainder of year) | \$ 1,559                              | \$ (318)                          | \$ 1,241                                   |
| 2006                     | 6,895                                 | (1,296)                           | 5,599                                      |
| 2007                     | 6,498                                 | (1,397)                           | 5,101                                      |
| 2008                     | 3,943                                 | (1,522)                           | 2,421                                      |
| 2009                     | 3,688                                 | (1,215)                           | 2,473                                      |
| Thereafter               | 4,846                                 |                                   | 4,846                                      |
|                          | \$ 27,429                             | \$ (5,748)                        | \$ 21,681                                  |

**7. Unrealized Investment Loss**

In December 2000 Actuate invested \$500,000 and acquired approximately 749,000 shares of a private company's class B preferred shares. This investment constituted a 2.6% equity interest in this company. The investment was made in order to enhance Actuate's product offerings by integrating the company's web reporting and data analysis (e.Analysis) technology into Actuate's suite of products. During the second quarter of fiscal year 2005, we became aware of new circumstances which caused us to reevaluate the value of our investment in this company. Based on this evaluation, we determined that the investment had been other than temporarily impaired and, accordingly, reduced the book value of this investment. As result of this event we incurred an unrealized investment loss of approximately \$284,000 and \$17,000 during the second and third quarters of fiscal year 2005, respectively. The total value of investment recorded on our balance sheet under other assets as of September 30, 2005 is \$199,000.

We will continue to monitor the value of this investment and, if necessary, adjust the value of our investment accordingly.

**8. Subsequent Events**

On October 25, 2005, the Compensation Committee of the Board of Directors of Actuate Corporation ( Actuate ) authorized Actuate to enter into a change of control severance benefit

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agreement (the Severance Agreements ) with each of the following executive officers: Messrs. Cittadini, Gaudreau, Coggins, Strauss, Ryan and Akiha and Ms. Vogt. The Severance Agreements, which were filed on form 8-K on November 1, 2005, shall remain in effect through December 31, 2007.

In October 2005, the Board of Directors approved an on-going extension of the Company's stock repurchase program, which was originally announced in September 2001 and has been extended from time to time. This extension authorized management to make additional repurchases. Under this repurchase program, the Company is authorized to repurchase Actuate common stock at varying amounts, in an amount not to exceed cash flow from operations during the prior quarter. The actual amount to be repurchased is approved in advanced each quarter by the Board. From the end of the third quarter of fiscal year 2005 through October 31, 2005, the Company has repurchased a total of 300,000 shares in the open market under this repurchase plan for a value totaling \$876,000.

In April 2005, a minority shareholder of Actuate Japan notified us that it wished to exercise its right to put its equity interest in Actuate Japan. The minority shareholder of Actuate Japan exercised its right on October 24, 2005 resulting in an actual payment of \$366,000 by Actuate.

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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 and 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, 2004 as filed with the Securities and Exchange Commission on March 16, 2005, as amended by our Form 10-K/A filed with the Securities and Exchange Commission on May 2, 2005.*

*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 the section titled *Business Risk Factors* in this Form 10-Q and in other filings made by the Company with the Securities and Exchange Commission.*

#### **Overview**

We are a leading provider of an Enterprise Reporting Application Platform, a unified software platform that enables large organizations and packaged application software vendors to develop and deploy self-service, customer and employee-facing Enterprise Reporting Applications. Enterprise Reporting Applications are intuitive, Web portal-like reporting applications that empower 100% of users with decision-making information. Our Actuate 8 product line provides a platform upon which Global 9000 organizations (companies with annual revenues greater than \$1 billion) and packaged application software vendors can develop and deploy mission-critical Enterprise Reporting Applications. These applications retrieve business information from corporate databases and deliver it as interactive Web pages, Excel spreadsheets, and analytic cubes to customers, partners and employees around the globe. Our products and services are used by our customers to develop and deploy Enterprise Reporting Applications across a range of business functions, including financial management, sales management, account management, and customer self-service.

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, consulting and training.

Our total revenues for the third quarter of fiscal 2005 were \$26.8 million, a 13% increase over the third fiscal quarter of 2004. This increase was primarily the result of higher services revenues, which grew by \$2.2 million over the same quarter in fiscal year 2004. For the third quarter of fiscal 2005, net income was \$3.7 million or \$.06 per share, compared with a net loss of \$848,000 or \$.01 per share in the third quarter of fiscal year 2004. The increase in net income during the third quarter of fiscal year 2005 was primarily due to the increased revenues of approximately 13% or \$3.1 million as well as a decrease in our operating expenses of approximately 12% or \$2.9 million compared to the third quarter of 2004. The decrease in our operating expenses was primarily the result of our announced

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restructuring in the fourth quarter of fiscal year 2004, which resulted in a reduction of approximately 53 positions. These reductions were concentrated in our Sales and Marketing and Research and Development departments and affected both domestic and international operations. Our total headcount was 493 as of September 30, 2005, which was an 8% or 45 person reduction from the same period last year. Our total headcount is expected to remain at the current levels in the near term future.

North American total revenues increased from \$18.1 million in the third quarter of fiscal 2004 to \$20.8 million in the third quarter of fiscal 2005. Revenues from international regions also increased from \$5.6 million in the third quarter of fiscal 2004 to \$6.0 million in the third quarter of fiscal 2005. During the third quarter of fiscal year 2005, we derived 22% of our total revenues from sales outside of North America versus 24% in the same period last year.

Finally, several of our competitors have released products that are marketed to be directly competitive with our Enterprise Reporting Application Platform. The existence of these competitive products required additional sales and marketing efforts to differentiate our products, which resulted in extended sales cycles. We believe that competition in the enterprise reporting market will continue to be vigorous in the near future.

We remain focused on four strategic sales initiatives that were announced during fiscal year 2004 and continue to be pursued during the fiscal year 2005. These initiatives are as follows:

*Selling to IT Management* We continue to re-focus 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 software solutions to market to line-of-business managers. These solutions will initially be related to financial management, customer self service, and reporting. We hope this initiative will result in increased license revenue over the medium-to-long term.

*Selling to Global 9000 Corporations in the Financial Services Sector* We intend to continue focusing on selling our products to Global 9000 financial services companies in an effort to increase our substantive market share in this sector. We are seeing a growing traction with financial performance management. We contribute this growth to a continued addition of capacity and new features to the existing Enterprise Reporting Applications and development and deployment of new Enterprise Reporting Applications in support of key business process. This has resulted in a continued stream of license revenues and increased service revenue and margins.

*Investing in the Business Intelligence Reporting Tool ( BIRT )* We are continuing to make a significant investment in creating and marketing a new open source code 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 adoption of BIRT will allow developers the ease of adding reporting to JAVA applications, accessibility to enterprise data and presentation of information in useful formats. The BIRT project continues to be a long-term initiative for our Company. On June 6, 2005, Eclipse Business Intelligence and Reporting Tool project version 1.0 was made generally available on Eclipse.org, allowing Java developers to easily integrate business intelligence and reporting capability into enterprise Java applications and commercial products. During the second quarter of fiscal year 2005, Actuate BIRT received Ready for IBM Rational Software validation providing developers using IBM Rational Software Architect, IBM Rational Application Developer and IBM Rational Web Developer with an open source driven option for their business intelligence and reporting.



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In March 2004, we introduced a new price list with added focus on licensing our server products based on the number of named users as opposed to the number of CPUs. This change was made to allow for a lower entry price point for new customers as well as to address the increases in the performance of individual CPUs and the scalability of our software. Under our new licensing model, our server products can either be licensed on a CPU basis or on a named user basis. These named user licenses are sold in predefined user blocks. In conjunction with the introduction of named user pricing, we also significantly increased the list price for our CPU-based licenses. As maintenance and support is often priced as a percentage of software list price, in such cases, our pricing for maintenance has also increased accordingly.

During fiscal year 2004, we implemented new requirements under the Sarbanes-Oxley Act of 2002 and recently enacted rules of the SEC and Nasdaq. These efforts caused us to incur significant increased costs in the latter half of fiscal year 2004 and the first quarter of fiscal year 2005. In particular, the rules governing the standards that must be met for management to assess our internal controls over financial reporting under Section 404 are complex, and require significant resources to administer. This ongoing process of reviewing, documenting and testing our internal controls over financial reporting continues to require a significant amount of management time and Company resources. Furthermore, maintaining compliance with the Sarbanes-Oxley Act of 2002 and other new rules and regulations has required us to hire additional personnel and has and may continue to require us to use additional outside legal, accounting and advisory services.

Actuate was incorporated in November 1993 in the State of California and reincorporated in the State of Delaware in July 1998. Actuate's principal executive offices are located at 701 Gateway Boulevard, South San Francisco, California. Actuate's telephone number is 650-837-2000. Actuate maintains a Web site at [www.actuate.com](http://www.actuate.com).

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

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

|   | Three Months Ended<br>September 30, |             | Nine Months Ended<br>September 30, |            |
|---|-------------------------------------|-------------|------------------------------------|------------|
|   | 2005                                | 2004        | 2005                               | 2004       |
| <b>Revenues:</b>                            |                                     |             |                                    |            |
| License fees                                | 33%                                 | 34%         | 34%                                | 41%        |
| Services                                    | 67                                  | 66          | 66                                 | 59         |
| <b>Total revenues</b>                       | <b>100</b>                          | <b>100</b>  | <b>100</b>                         | <b>100</b> |
| <b>Costs and expenses:</b>                  |                                     |             |                                    |            |
| Cost of license fees                        | 2                                   | 3           | 2                                  | 3          |
| Cost of services                            | 21                                  | 25          | 22                                 | 24         |
| Sales and marketing                         | 35                                  | 42          | 34                                 | 40         |
| Research and development                    | 15                                  | 22          | 16                                 | 20         |
| General and administrative                  | 10                                  | 13          | 13                                 | 11         |
| Amortization of other purchased intangibles |                                     | 1           | 1                                  | 1          |
| Restructuring charges                       |                                     |             | 1                                  | 1          |
| <b>Total costs and expenses</b>             | <b>83</b>                           | <b>106</b>  | <b>89</b>                          | <b>100</b> |
| Income (loss) from operations               | 17                                  | (6)         | 11                                 |            |
| Interest and other income, net              | 1                                   |             | 1                                  |            |
| Income (loss) before income taxes           | 18                                  | (6)         | 12                                 |            |
| Provision (benefit) for income taxes        | 4                                   | (3)         | 2                                  |            |
| <b>Net income (loss)</b>                    | <b>14%</b>                          | <b>(3)%</b> | <b>10%</b>                         | <b>0%</b>  |

**Revenues**

Our revenues are derived from license fees and services, which include software maintenance and support, consulting and training. Total revenues increased 13% from \$23.8 million for the quarter ended September 30, 2004 to \$26.8 million for the quarter ended September 30, 2005. Sales outside of North America were \$6.0 million or 22% of total revenues for the third quarter of fiscal year 2005, compared to \$5.6 million, or 24% of total revenues for the third quarter of fiscal year 2004. For the nine months ended September 30, 2005, sales outside of North America were \$17.5 million, or 23% of total revenues as compared to \$17.3 million, or 22% of total revenues for the nine months ended September 30, 2004. No single customer accounted for more than 10% of our revenues for any of the periods presented.

Three Months Ended

Nine Months Ended

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|                       | (In thousands)   |                  |                  |               | (In thousands)   |                  |                  |               |
|-----------------------|------------------|------------------|------------------|---------------|------------------|------------------|------------------|---------------|
|                       | September 30,    |                  | Variance<br>\$ s | Variance<br>% | September 30,    |                  | Variance<br>\$ s | Variance<br>% |
|                       | 2005             | 2004             |                  |               | 2005             | 2004             |                  |               |
| <b>Revenues</b>       |                  |                  |                  |               |                  |                  |                  |               |
| License fees          | \$ 8,894         | \$ 8,017         | \$ 877           | 11%           | \$ 26,647        | \$ 31,790        | \$ (5,143)       | (16)%         |
| Services              | 17,951           | 15,757           | 2,194            | 14%           | 50,593           | 45,502           | 5,091            | 11%           |
| <b>Total Revenues</b> | <b>\$ 26,845</b> | <b>\$ 23,774</b> | <b>\$ 3,071</b>  | <b>13%</b>    | <b>\$ 77,240</b> | <b>\$ 77,292</b> | <b>\$ (52)</b>   | <b>(0)%</b>   |
| <b>% of Revenue</b>   |                  |                  |                  |               |                  |                  |                  |               |
| License fees          | 33%              | 34%              |                  |               | 34%              | 41%              |                  |               |
| Services              | 67%              | 66%              |                  |               | 66%              | 59%              |                  |               |
| <b>Total Revenues</b> | <b>100%</b>      | <b>100%</b>      |                  |               | <b>100%</b>      | <b>100%</b>      |                  |               |

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*License fees.* The increase in license revenues for the third quarter of fiscal year 2005 over the same period in the prior year was primarily due to the fact that in the third quarter of fiscal year 2005 we were able to record more large orders (those orders with total license and first year maintenance in excess of \$100,000) than in the third quarter of fiscal 2004. These large orders also had a higher average selling price than those recorded in the third quarter of fiscal year 2004. The region that realized the most significant license revenue growth was the Asia Pacific region, which accounted for a 114% or \$435,000 increase in license revenues over the third quarter of fiscal year 2004, while the North America region grew by 10% and accounted for \$658,000 of the increase. These increases were offset by a 13% or \$216,000 decrease in license revenues in Europe. By region, North American continued to account for approximately 75% of the total license revenue while the Europe and Asia Pacific regions accounted for 16% and 9% of the total license revenues, respectively. For the same period last year, the North America region accounted for approximately 75% of the total license revenue while the Europe and Asia Pacific regions accounted for 20% and 5% of the total license revenues, respectively. There was no transaction recognized over \$1.0 million for the third quarter of fiscal year 2005, while there was one such transaction recognized in the third quarter of fiscal year 2004.

*Services.* The increase in services revenues was primarily driven by the growth in our maintenance and support revenues, which increased in the third quarter of fiscal year 2005 by 15% or \$1.8 million over the same quarter last year. Although a portion of this growth was attributed to a price increase for renewals in fiscal year 2005, the primary contributor to the growth came from a continued implementation of a more aggressive renewal campaign by our maintenance renewal group. We also experienced growth in our services and training revenues, which increased by approximately 10% or \$385,000. This was primarily attributed to two large projects with customers in the financial services sector. We experienced improvements in our services margins from 62% in the third quarter of fiscal year 2004 to 68% for the third quarter of fiscal year 2005. This increased in margins was partially the result of a significant decrease in headcount, as well as the fact that maintenance revenues represent a larger portion of total services revenues. Service maintenance revenues inherently carry higher margins, this resulted in an improvement in overall services margins. By region, North America continued to account for approximately 79% of the total services revenue while the Europe and Asia Pacific regions accounted for 17% and 4% of the total services revenues, respectively. For the same period last year, the North America region accounted for approximately 79% of the total services revenue while the Europe and Asia Pacific regions accounted for 18% and 3% of the total services revenues, respectively.

**Operating Expenses***Cost of license fees*

|                      | Three Months Ended |        |          |          | Nine Months Ended |          |          |          |
|----------------------|--------------------|--------|----------|----------|-------------------|----------|----------|----------|
|                      | (In thousands)     |        |          |          | (In thousands)    |          |          |          |
|                      | September 30,      |        |          |          | September 30,     |          |          |          |
|                      |                    |        | Variance | Variance |                   |          | Variance | Variance |
|                      | 2005               | 2004   | \$ s     | %        | 2005              | 2004     | \$ s     | %        |
| Cost of license fees | \$ 489             | \$ 619 | \$ (130) | (21)%    | \$ 1,804          | \$ 2,549 | \$ (745) | (29)%    |
| % of License Revenue |                    | 5%     | 8%       |          | 7%                | 8%       |          |          |

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Cost of license fees consists primarily of product packaging, documentation, production costs and the amortization of purchased technology. The decrease in costs of license fees in absolute dollars for the third quarter of fiscal year 2005, compared to the corresponding period in the prior year, was primarily due to reduced amortization of the purchased technologies associated with the acquisition of Tidestone. Purchased technologies related to the Tidestone acquisition became fully amortized in the second quarter of fiscal 2005 and accounted for approximately \$225,000 of the decrease. This decrease was partially offset by an increase in third party royalties of approximately \$92,000 due to higher sales of our analytics product. The decrease in the costs of license fees for the nine months ended September 30, 2005 was primarily due to reduced amortization of the purchased technologies associated with the Tidestone acquisition, which accounted for approximately \$307,000 of the decrease. We also experienced a decrease of approximately \$229,000 in packaging, printing, warehousing and localization costs and a decrease in third party royalties of approximately \$265,000 resulting from lower sales of our analytics product during the first half of fiscal year 2005. We expect our cost of license fees, as a percentage of revenues from license fees, to remain between 5% and 7% of revenues from license fees for the remainder of fiscal year 2005.

*Cost of services*

|                       | Three Months Ended |          |                  |               | Nine Months Ended |           |                  |               |
|-----------------------|--------------------|----------|------------------|---------------|-------------------|-----------|------------------|---------------|
|                       | (In thousands)     |          |                  |               | (In thousands)    |           |                  |               |
|                       | September 30,      |          |                  |               | September 30,     |           |                  |               |
|                       | 2005               | 2004     | Variance<br>\$ s | Variance<br>% | 2005              | 2004      | Variance<br>\$ s | Variance<br>% |
| Cost of services      | \$ 5,702           | \$ 6,019 | \$ (317)         | (5)%          | \$ 17,271         | \$ 18,689 | \$ (1,418)       | (8)%          |
| % of Services Revenue | 32%                | 38%      |                  |               | 34%               | 41%       |                  |               |

Cost of services consists primarily of personnel and related costs, facilities costs incurred in providing software maintenance and support, training and consulting services, as well as third-party costs incurred in providing training and consulting services. The decrease in cost of services for the third quarter of fiscal year 2005, compared to the corresponding period in the prior year, was primarily due to lower salaries and compensation related costs of approximately \$367,000 due to a 9% reduction in our headcount. As a result of this reduction in headcount, we also experienced lower employee travel costs of approximately \$106,000 and reduced facilities and other operating expenses of approximately \$241,000. These reductions were offset by an increase in certified training and professional service costs of \$392,000. The decrease in the cost of services for the nine months ended September 30, 2005 was primarily due to reduced salaries and compensation related costs of approximately \$922,000 resulting from the decreases in headcount. As a result of this decrease in headcount, we also experienced lower employee travel costs of approximately \$140,000 and facilities and other operating expenses of approximately \$530,000. These reductions were offset by increase in certified training and professional service costs of \$159,000. We expect our cost of services, as a percentage of services revenues, will be in approximately the same range for the remainder of fiscal year 2005.

*Sales and marketing*

|  | Three Months Ended |      | Nine Months Ended |      |
|--|--------------------|------|-------------------|------|
|  | (In thousands)     |      | (In thousands)    |      |
|  | September 30,      |      | September 30,     |      |
|  | 2005               | 2004 | 2005              | 2004 |
|  |                    |      |                   |      |

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|                     | <u>2005</u> | <u>2004</u> | <u>Variance</u><br><u>\$ s</u> | <u>Variance</u><br><u>%</u> | <u>2005</u> | <u>2004</u> | <u>Variance</u><br><u>\$ s</u> | <u>Variance</u><br><u>%</u> |
|---------------------|-------------|-------------|--------------------------------|-----------------------------|-------------|-------------|--------------------------------|-----------------------------|
| Sales and marketing | \$ 9,411    | \$ 10,085   | \$ (674)                       | (7)%                        | \$ 26,564   | \$ 31,085   | \$ (4,521)                     | (15)%                       |
| % of Revenue        | 35%         | 42%         |                                |                             | 34%         | 40%         |                                |                             |

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Sales and marketing expenses consist primarily of salaries, commissions and bonuses earned by sales and marketing personnel, promotional expenses, travel, entertainment and facility costs. The decreases in sales and marketing expenses in both absolute dollars and as a percentage of total revenues for the third quarter of fiscal year 2005 was due to lower salaries and benefits related costs of approximately \$922,000 and employee travel and entertainment costs of \$253,000 due primarily to a 13% reduction in headcount driven by our restructuring plan, which was implemented in the fourth quarter of fiscal year 2004. These decreases were offset by a \$371,000 increase in commissions and bonuses due to higher sales in the third quarter of fiscal year 2005. The 15% decrease in sales and marketing costs for the nine months ended September 30, 2005 were primarily due to reductions in salaries, commissions and related compensation expenses of approximately \$3.2 million. This decrease was the result of our fourth quarter of fiscal year 2004 restructuring. This restructuring was the primary driver in the reduction of our Sales and Marketing headcount from 183 positions at September 30, 2004 to 160 positions at September 30, 2005. Other significant cost reductions include reductions in our facility and related expenses of approximately \$800,000 and marketing and promotional expenses of \$475,000. We currently expect our sales and marketing expenses as a percentage of total revenues to be in the range of 30% to 35% of total revenues for the remainder of fiscal year 2005.

*Research and development*

|                          | Three Months Ended |          |                  |               | Nine Months Ended |           |                  |               |
|--------------------------|--------------------|----------|------------------|---------------|-------------------|-----------|------------------|---------------|
|                          | (In thousands)     |          |                  |               | (In thousands)    |           |                  |               |
|                          | September 30,      |          |                  |               | September 30,     |           |                  |               |
|                          | 2005               | 2004     | Variance<br>\$ s | Variance<br>% | 2005              | 2004      | Variance<br>\$ s | Variance<br>% |
| Research and development | \$ 4,011           | \$ 5,132 | \$ (1,121)       | (22)%         | \$ 12,370         | \$ 15,546 | \$ (3,176)       | (20)%         |
| % of Revenue             | 15%                | 22%      |                  |               | 16%               | 20%       |                  |               |

Research and development costs are expensed as incurred and consist primarily of personnel and related costs associated with the development of new products, the enhancement of existing products, quality assurance and testing. The decrease in research and development expenses in the third quarter of fiscal year 2005 was primarily attributed to our restructuring plan that was implemented in the fourth quarter of fiscal year 2004 and resulted in a 13% reduction to the development headcount. The impact of this restructuring extended to all cost categories within the department and resulted in lower employee compensation, travel and related expenses of approximately \$700,000, while reduced facilities and other professional services expenses accounted for approximately \$197,000, and \$119,000, respectively. For the nine months ended September 30, 2005, employee compensation, travel and related costs accounted for \$1.9 million of the decrease in cost while reduced facilities and other professional services expenses accounted for approximately \$976,000 and \$233,000 of the total cost reduction, respectively. Most of the facility related cost reductions were due to the closure of our office in Seattle, Washington which occurred during the fourth quarter of fiscal year 2004. 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 17% to 20% of total revenues for the remainder of fiscal year 2005.

**Table of Contents***General and administrative*

|                            | Three Months Ended |          |          |          | Nine Months Ended |          |          |          |
|----------------------------|--------------------|----------|----------|----------|-------------------|----------|----------|----------|
|                            | (In thousands)     |          |          |          | (In thousands)    |          |          |          |
|                            | September 30,      |          |          |          | September 30,     |          |          |          |
|                            |                    |          | Variance | Variance |                   |          | Variance | Variance |
| 2005                       | 2004               | \$ s     | %        | 2005     | 2004              | \$ s     | %        |          |
| General and administrative | \$ 2,622           | \$ 3,019 | \$ (397) | (13)%    | \$ 9,933          | \$ 8,066 | \$ 1,867 | 23%      |
| % of Revenue               | 10%                | 13%      |          |          | 13%               | 10%      |          |          |

General and administrative expenses consist primarily of personnel and related costs for finance, human resources, information systems and general management, as well as legal, bad debt and accounting expenses. The decreases in general and administrative expenses in both absolute dollars and as a percentage of total revenues for the third quarter of fiscal year 2005 was primarily due to a reduction in bad debt expense of \$672,000 offset by an increase in accounting and legal fees of approximately \$300,000 due mainly to the Company's on-going compliance with the Section 404 of the Sarbanes-Oxley Act. The increase in expenses for the nine months ended September 30, 2005 in both absolute dollars and as a percentage of total revenues were primarily due to increased professional consulting fees of approximately \$1.5 million related to the Company's compliance with the requirements of Section 404 of the Sarbanes-Oxley Act, an increase of \$390,000 in tax expense which was primarily the result of a \$365,000 favorable sales tax audit settlement during the second quarter of 2004, and an increase of \$249,000 in depreciation expense related to our new accounting system which was fully implemented by August of fiscal year 2004. These increases were offset by a decrease in bad debt expense of \$330,000. We expect our general and administrative expenses to increase in absolute dollars for the remainder of fiscal year 2005 and the first quarter of fiscal year 2006. This is due to costs associated with maintaining compliance under the Sarbanes-Oxley Act, which are expected to increase during this period due to seasonal patterns.

*Amortization of other intangibles*

|                                   | Three Months Ended |        |          |          | Nine Months Ended |        |          |          |
|-----------------------------------|--------------------|--------|----------|----------|-------------------|--------|----------|----------|
|                                   | (In thousands)     |        |          |          | (In thousands)    |        |          |          |
|                                   | September 30,      |        |          |          | September 30,     |        |          |          |
|                                   |                    |        | Variance | Variance |                   |        | Variance | Variance |
| 2005                              | 2004               | \$ s   | %        | 2005     | 2004              | \$ s   | %        |          |
| Amortization of other intangibles | \$ 17              | \$ 276 | \$ (259) | (94)%    | \$ 487            | \$ 834 | \$ (347) | (42)%    |
| % of Revenue                      |                    | 1%     |          |          | 1%                | 1%     |          |          |

The decreases in amortization of other purchased intangibles in both absolute dollars and as a percentage of total revenues for the third quarter and the first nine months of fiscal year 2005 was due to the fact that we fully amortized the other intangibles associated with our acquisitions of Tidestone and Nimble Technology by the second and third quarter of fiscal year 2005, respectively. In addition, during the second quarter of fiscal year 2005, we offset approximately \$527,000 of accrued liabilities from our purchase of Nimble Technology against purchased technologies as the contingencies that gave rise to the original accrued liability amounts were settled for an amount lower than originally estimated. As there was no goodwill associated with the Nimble acquisition, the reduction of accrued liabilities resulted in a decrease to

unamortized purchased technologies during the second quarter of fiscal year 2005.

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The following table presents the estimated future amortization of purchased technology (in thousands).

|                          | <b>Purchased<br/>Technology</b> |
|--------------------------|---------------------------------|
| 2005 (remainder of year) | \$ 115                          |
| 2006                     | 461                             |
| 2007                     | 461                             |
| 2008                     | 268                             |
|                          | <b>\$ 1,305</b>                 |

*Restructuring charges*

|                       | <b>Three Months Ended</b> |                 |                 |          | <b>Nine Months Ended</b> |                 |                 |          |  |
|-----------------------|---------------------------|-----------------|-----------------|----------|--------------------------|-----------------|-----------------|----------|--|
|                       | <b>(In thousands)</b>     |                 |                 |          | <b>(In thousands)</b>    |                 |                 |          |  |
|                       | <b>September 30,</b>      |                 |                 |          | <b>September 30,</b>     |                 |                 |          |  |
|                       |                           | <b>Variance</b> | <b>Variance</b> |          |                          | <b>Variance</b> | <b>Variance</b> |          |  |
|                       | <b>2005</b>               | <b>2004</b>     | <b>\$ s</b>     | <b>%</b> | <b>2005</b>              | <b>2004</b>     | <b>\$ s</b>     | <b>%</b> |  |
| Restructuring charges | \$ 4                      | \$ 4            | \$ 4            | 100%     | \$ 751                   | \$ 586          | \$ 165          | 28%      |  |
| % of Revenue          |                           |                 |                 |          | 1%                       | 1%              |                 |          |  |

During fiscal year 2004, the Company underwent two restructurings. The first occurred in the first quarter of fiscal year 2004 when we initiated a restructuring of our French operation. We undertook this restructuring in order to size the operation to meet the expected demand for our products and services in France and to shift our sales strategy in France from one based primarily on direct sales to a strategy more focused on indirect sales channels. This restructuring consisted primarily of a workforce reduction and associated legal expenses, which resulted in a headcount reduction of five people and associated severance, benefit and related legal costs of \$586,000 during the first quarter of 2004.

In early October 2004, we implemented an additional restructuring. This company-wide restructuring was undertaken to align our cost structure with future revenue expectations. The costs associated with this restructuring totaled \$1.4 million in the fourth quarter of 2004 and were primarily comprised of severance and related costs. During the first quarter of fiscal year 2005, we incurred an additional expenditure of approximately \$569,000 related to this restructuring. These additional charges were primarily related to idle facility costs of our French facility. According to Financial Accounting Standards statement No. 146 (SFAS 146) Accounting for Costs Associated with Exit or Disposal Activities, in order to record the costs related to an idle facility, we must first cease use of the facility. We ceased use of our French facility in the first quarter of fiscal year 2005. In the second and third quarters of fiscal year 2005, we incurred additional restructuring of our French operations totaling approximately \$178,000 and \$308,000, respectively. These costs were entirely related to the restructuring of our French operation and were directly the result of our restructuring plan initiated in the fourth quarter of fiscal year 2004. Included were additional charges related to employee matters and estimated settlement costs stemming from employee litigation, partially offset by a reduction in the France lease loss accrual due to an early termination of the facility lease. In addition to the restructuring charge in France during the third quarter of fiscal year 2005, we reviewed our assumptions underlying the idle facilities reserve previously recorded for our South San Francisco location. This review was triggered by the extension of our sublease with the existing tenant that was signed and finalized in September of fiscal year 2005. Some of the assumptions that were previously asserted were updated



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and, accordingly, we revised and lowered the estimated exit costs by approximately \$304,000. The net impact of the French restructuring of \$308,000 offset by the reduction of \$304,000 to the idle facility reserves resulted in a net restructuring expense of \$4,000 for the third quarter of fiscal year 2005.

**Interest and Other Income (Expense), Net**

|  | Three Months Ended |         |                  |               | Nine Months Ended |        |                  |               |
|--|--------------------|---------|------------------|---------------|-------------------|--------|------------------|---------------|
|  | (In thousands)     |         |                  |               | (In Thousands)    |        |                  |               |
|  | September 30,      |         |                  |               | September 30,     |        |                  |               |
|  | 2005               | 2004    | Variance<br>\$ s | Variance<br>% | 2005              | 2004   | Variance<br>\$ s | Variance<br>% |
| Interest and other Income (Expense), net | \$ 376             | \$ (89) | \$ 465           | N/A           | \$ 909            | \$ 295 | \$ 614           | 208%          |
| % of Revenue                             | 1%                 |         |                  | 1%            |                   |        |                  |               |

Interest and other income (expense), net, is comprised primarily of interest income earned by the Company on cash and short-term investments. The increase was primarily due to improved returns on our cash and investments of \$243,000 and currency exchange gains of \$211,000 during the third quarter of fiscal year 2005. The increase for the nine months ending September, 30 2005 was primarily due to improved returns on our cash and investments of \$538,000 and currency exchange gains totaling \$366,000. These increases were offset by an unrealized investment loss of \$301,000 which we incurred in the second and third quarters of fiscal year 2005. This loss was associated with our \$500,000 investment in a company that we evaluated during the second quarter of fiscal year 2005. We determined the value to be other than temporarily impaired and, accordingly, reduced the book value from \$500,000 to approximately \$199,000.

**Provision (Benefit) for Income Taxes**

|                                      | Three Months Ended |          |                  |               | Nine Months Ended |        |                  |               |
|--------------------------------------|--------------------|----------|------------------|---------------|-------------------|--------|------------------|---------------|
|                                      | (In thousands)     |          |                  |               | (In thousands)    |        |                  |               |
|                                      | September 30,      |          |                  |               | September 30,     |        |                  |               |
|                                      | 2005               | 2004     | Variance<br>\$ s | Variance<br>% | 2005              | 2004   | Variance<br>\$ s | Variance<br>% |
| Provision (benefit) for income taxes | \$ 1,225           | \$ (617) | \$ 1,842         | N/A           | \$ 1,507          | \$ 162 | \$ 1,345         | 830%          |
| % of Revenue                         | (4)%               | 3%       |                  | (2)%          | (0)%              |        |                  |               |

We recorded an income tax provision of \$1.2 million in the three months ended September 30, 2005 resulting in an effective tax rate of 25%, as compared to an income tax benefit of \$617,000 in the three months ended September 30, 2004. For the nine months ended September 30, 2005, we recorded an income tax provision of \$1.5 million resulting in an effective tax rate of 16.9%, as compared to an income tax provision of \$162,000 for the same period of fiscal year 2004. The increase in the income tax provision for 2005 as compared to 2004 is due to higher

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domestic net income in 2005 and a true-up of the tax provision after finalization of the 2004 federal and state income tax returns.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Based upon the level of historical tax losses, management believes it is more likely than not that the Company will not realize the benefits of these deductible differences. Therefore, a full valuation allowance has been established.

The Company's ability to utilize the net operating losses and tax credit carryforwards in the future may be subject to substantial restriction in the event of past or future ownership changes as defined in Section 382 of the Internal Revenue Code and similar state tax laws. The Company believes it is more likely than not that the net operating losses and tax credit carryforwards are fully limited by Section 382 thus a full valuation allowance has been established.

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### **Liquidity and Capital Resources**

As of September 30, 2005, we had cash, cash equivalents and short-term investments of \$50.8 million, an increase of approximately \$3.5 million from \$47.3 million at December 31, 2004. We also had \$35.8 million in net working capital as of September 30, 2005, representing an increase of approximately \$5.4 million from \$30.4 million at December 31, 2004.

*Cash from operating activities.* Cash provided by operations was \$8.5 million for the nine months ended September 30, 2005 compared to \$5.7 million for the same period in fiscal 2004. This increase of \$2.8 million was primarily derived from (i) our earnings from on-going operations prior to non-cash expenses such as depreciation, amortization and bad debt; (ii) the tax benefit related to the exercise of employee stock options, which reduces our cash outlay for income tax expense; and (iii) changes in our working capital, which is primarily composed of net collections of accounts receivable totaling approximately \$4.2 million and decreases in deferred revenue of approximately \$2.3 million partially offset by payments of accounts payable, accrued expenses and restructuring obligations.

*Cash from investing activities.* Cash provided by investing activities was \$1.1 million for the nine months ended September 30, 2005 compared to \$10.9 million for the same period in fiscal 2004. The decrease of \$9.8 million was mainly due to increases in the purchases of short term investments during the nine months ending September 30, 2005.

*Cash from financing activities.* Net cash used in financing activities was \$4.5 million during the nine months ended September 30, 2005, compared to \$682,000 used in the nine months ended September 30, 2004. For the nine months ended September 30, 2005, net cash used in financing activities was primarily for the repurchase of 2,703,000 shares of our common stock totaling approximately \$6.2 million as compared with the repurchase of 824,000 totaling \$2.7 million in the nine months ending September 30, 2004. This was partially offset by proceeds derived from the issuance of common stock under our employee stock purchase plan and stock option plans.

In April 2005, a minority shareholder of Actuate Japan notified us that it wished to exercise its right to put its equity interest in Actuate Japan. The minority shareholder of Actuate Japan exercised its right on October 24, 2005 resulting in a payment of \$366,000 by Actuate.

The Company believes that its current cash balances and any cash generated from operations will be sufficient to meet its cash needs for working capital and capital expenditures for at least the next twelve months. Thereafter, if cash generated from operations is insufficient to satisfy the Company's liquidity requirements, it may seek to sell additional equity or obtain credit facilities. The sale of additional equity could result in additional dilution to the Company's stockholders. A portion of the Company's cash may be used to repurchase its common stock, acquire or invest in complementary businesses, including the purchase of the remaining interest of its subsidiary in Japan, or products or to obtain the right to use complementary technologies.

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***BUSINESS RISK FACTORS***

*Investors should carefully consider the following risk factors before making an investment decision. The risks described below are not the only ones facing Actuate. Additional risks that it does not yet know of or that it currently thinks are immaterial may also impair its business operations. If any of the following risks actually occur, the Company's business, operating results or financial condition could be materially harmed. In such case, the trading price of the Company's 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 QUARTERLY AND ANNUAL 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, unreliable. In addition, the Company believes that period-to-period comparisons of its operating results are not necessarily meaningful and you 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;

The marketing by its competitors of 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 enterprise reporting and business intelligence software to one or a very small number of vendors from which a customer has already purchased software;

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

Sales cycles and sales performance of its indirect channel partners;

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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;

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

The outcome or publicity surrounding any pending or threatened lawsuits;

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

Budgeting cycles of its customers;

Failure to successfully manage its acquisitions;

Defects in its products and other product quality problems;

Failure to successfully meet hiring needs and unexpected personnel changes;

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

Lost revenue due to the availability of open-source products of the Company and its competitors;

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; and

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

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; and

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

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.

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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, including plans to increase its sales and marketing and research and development efforts, are based in significant part on its expectations of future revenues and are relatively fixed in the short-term. If revenues fall below its expectations and it is unable to reduce its spending in response quickly, the Company's business, operating results, and financial condition are likely to 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 in some future quarter, the Company's operating results will be 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 could decline.

## **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 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 costly litigation and 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 harm the Company's business, operating results and financial condition.

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

The Company's total revenues derived from sales outside North America were 23%, 22% and 16% in the first nine months of fiscal years 2005, 2004 and 2003, 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 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. 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 harmed.

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

To date, the Company has sold its products principally through our 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 38% of total license revenues for the first nine months of fiscal year 2005, and 31% and 32% for the first nine months of fiscal years 2004 and 2003, respectively. The Company's ability to achieve significant revenue growth in the future will depend in large part on the success of our sales force in further establishing and maintaining relationships with indirect channel partners. In particular, a significant element of the Company's strategy is to embed its technology in products offered by OEMs for resale or as a hosted application to such OEMs' customers and end-users. The Company also intends to establish and expand its relationships with resellers and systems integrators so that such resellers and systems integrators will increasingly recommend its products to their clients. The Company's future success will depend on the ability of its indirect channel partners to sell and support its products. If the sales and implementation cycles of its indirect channel partners are lengthy or variable or its OEMs experience difficulties embedding its technology into their products or it fails to train the sales and customer support personnel of such indirect channel partners in a timely or effective fashion, the Company's business, operating results and financial condition would be harmed.

Although the Company is currently investing, and plans to continue to invest, significant resources to expand and develop relationships with OEMs, 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 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 harmed. 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 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 four principal forms:

Competition from current or future business intelligence software vendors such as Business Objects, Cognos, Hyperion, Information Builders, and MicroStrategy, each of which offers enterprise reporting products;

Competition from other large software vendors such as IBM, Microsoft, Oracle and SAP, to the extent they include reporting functionality with their applications or databases;

Competition from other software vendors and software development tool vendors including providers of open-source software products; and

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Competition from the IT departments of current or potential customers that may develop scalable Enterprise Reporting Applications internally, which applications may be cheaper and more customized than the Company's 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 may. 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 enterprise reporting software products or significantly increase the functionality of their existing reporting 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 Enterprise Reporting Application 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 prospective 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 harmed.

**IF THE MARKET FOR ENTERPRISE REPORTING APPLICATION SOFTWARE DOES NOT GROW AS THE COMPANY EXPECTS, ITS BUSINESS WOULD BE SERIOUSLY HARMED.**

The market for Enterprise Reporting Application software products is still emerging and the Company cannot be certain that such market will continue to grow or that, even if the market does grow, businesses will purchase the Company's products. If the market for Enterprise Reporting Application software products 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 enterprise reporting software and 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 Enterprise Reporting Applications 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 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

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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 vendor's entire organization that the Company's products are the appropriate software for the vendor's application. This time period does not include the sales and implementation cycles of such vendor's own products, which can be longer than the Company's sales and implementation cycles. Certain of the Company's customers have in the past, or may in the future, experience difficulty completing the initial implementation of Actuate's products. Any difficulties or delays in the initial implementation by the Company's end-user customers or indirect channel partners could cause such customers 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 harmed.

**ADVANCES IN HARDWARE 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. Furthermore, in many cases, use of the software on such advanced hardware 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 and 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 seriously harm the Company's business, operating results and financial condition.

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

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 (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 identified one material weakness, which was disclosed in Section 9A of the Company's Annual Report on Form 10-K for the year ended December 31, 2004 as filed with the Securities and Exchange Commission on March 16, 2005, as amended by Form 10-K/A filed with the Securities and Exchange Commission on May 2, 2005. 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.

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**SECTION 404 AND OTHER RECENTLY ENACTED REGULATORY CHANGES HAVE CAUSED THE COMPANY TO INCUR INCREASED COSTS AND OPERATING EXPENSES AND MAY MAKE IT MORE DIFFICULT FOR THE COMPANY TO ATTRACT AND RETAIN QUALIFIED OFFICERS AND DIRECTORS.**

The Sarbanes-Oxley Act of 2002 and recently enacted rules of the SEC and Nasdaq have caused the Company to incur significant increased costs as it implements and responds to new requirements. 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 new and 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, a significant strain on the Company's management, information systems and resources. Furthermore, achieving and maintaining compliance with Sarbanes-Oxley and other new rules and regulations has required the Company to hire additional personnel and has and will continue to require it to use additional outside legal, accounting and advisory services.

Any acquisitions made by the Company will also put a significant strain on its management, information systems and resources. In addition, 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 implementation of any changes necessary to maintain effective internal controls over financial reporting.

Any failure to satisfy the new rules could make it more difficult for the Company to obtain certain types of insurance, including director and officer liability insurance, and it may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. Alternatively, the Company may determine that it should reduce its director and officer liability insurance policy limits. The impact of any of these events could also make it more difficult for the Company to attract and retain qualified persons to serve on its board of directors, or as executive officers.

**THE COMPANY MAY MAKE FUTURE 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. Acquisitions involve numerous risks, including the following:

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;



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

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.

**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 Enterprise Reporting Applications, 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



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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 Business Intelligence Reporting Tools ( BIRT ) open source code project as part of the Eclipse open source code 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 companies that they license the Company's commercially available products. If BIRT does not achieve market acceptance and result in promoting sales of commercially available products, the Company's business, operating results and financial condition may be harmed.

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

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

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

A substantial portion of the Company's revenues is derived from international sales. International operations are subject to a number of risks, any of which could harm our 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 in 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;

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;

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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 successful in any future foreign exchange hedging transactions in which it engages, the Company's business, operating results and financial condition could be 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 our key employees, or if one or more of our executive officers or key employees decide to join a competitor or otherwise compete directly or indirectly with it, this could have a significant adverse effect on the Company's business.

In addition, because experienced personnel in our 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 regulations that have recently taken effect require the expensing of stock options, which will impair our future 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 RULES AND REGULATIONS 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 Securities and Exchange Commission (the "SEC") and various bodies formed to interpret and create appropriate accounting policies. A change in these policies can have a significant effect on the Company's reported results

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and may even retroactively affect previously reported transactions. The Company's accounting policies that recently has been or may be affected by changes in the accounting rules are as follows:

Software revenue recognition;

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Accounting for income taxes;

Accounting for business combinations and related goodwill; and

Accounting for stock issued to employees.

**THE COMPANY'S EARNINGS MAY BE ADVERSELY AFFECTED DUE TO RECENT CHANGES IN THE ACCOUNTING RULES GOVERNING THE RECOGNITION OF STOCK-BASED COMPENSATION EXPENSE.**

The Company currently accounts for the issuance of stock options using the intrinsic value method under APB Opinion No. 25, Accounting for Stock Issued to Employees, under which the Company generally does not record compensation expense related to employee stock options in its financial statements. However, in accordance with SFAS 123 and SFAS 148, the Company provides additional disclosures of its operating results in the notes to its financial statements as if it had applied the fair value method of accounting. Had the Company accounted for its stock-based compensation expense for employees in its results of operations under the fair value method of accounting prescribed by SFAS 123, the compensation charges would have been significantly higher than the intrinsic value method used by the Company, resulting in a reduction of net income of approximately \$1.5 million and \$2.4 million in the third quarter of fiscal years 2005 and 2004, respectively, and \$4.4 and \$8.0 million in the first nine months of fiscal years 2005 and 2004 respectively.

In December 2004, the FASB issued SFAS No. 123(R), which replaces SFAS 123 and supersedes APB 25. SFAS 123(R) requires compensation costs relating to share-based payment transactions to be recognized in financial statements. This statement is effective as of the beginning of the first annual period that began after June 15, 2005. Accordingly, the Company will be required to adopt SFAS 123(R) starting in our first fiscal quarter of 2006. The Company expects the adoption of SFAS 123(R) to have a material adverse impact on its net income or loss and its net income or loss per share by decreasing its income or increasing its losses by the additional amount of such stock option charges. The Company is currently in the process of evaluating the extent of such impact and cannot quantify the amount of such impact at this time.

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

While the Company was profitable in its most recent fiscal year, 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



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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 significant variation in operating results in any period.

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

Software products as complex as those offered by the Company often contain errors or defects, particularly when first introduced, when new versions or enhancements are released and when configured to individual customer computing systems. The Company currently has known errors and defects in its products. Despite testing conducted by the Company, if additional defects and errors are found in current versions, new versions or enhancements of its products after commencement of commercial shipment, this could result in the loss of revenues or a delay in market acceptance. The occurrence of any of these events could seriously harm the Company's business, operating results and financial condition.

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

Although license agreements with our 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 seriously 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 2019. 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 shrink- or 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 seriously harmed.



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

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

Actual or anticipated fluctuations in its operating results;

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

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

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

Developments in ongoing or threatened litigation;

Announcements of technological innovations;

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

New products 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 Enterprise Reporting Application software;

Adoption of new accounting standards affecting the software industry (including stock option-expensing roles); 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 company. 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 harm the Company's business, operating results and financial condition.

**CHANGES IN TAX RATES OR NEGATIVE 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 rates and other income tax laws, which could increase the Company's future income tax provision. While the Company believes that all material income tax liabilities are reflected properly in its 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

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effective income tax rate. Future effective income tax rates could be adversely affected if earnings are lower than anticipated in jurisdictions where the Company has statutory tax rates lower than in the United States.

**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 and eliminating the ability of stockholders to act by written consent. In addition, certain provisions of Delaware law and the Company's stock option plans may also have the effect of discouraging, delaying or preventing a change in control or unsolicited acquisition proposals. The anti-takeover effect of these provisions may also have an adverse effect on the public trading price of the Company's common stock.

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**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

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

*Foreign Currency Exchange Risk.* During the first nine months of fiscal years 2005 and 2004 we derived 23% 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. We are also exposed to foreign exchange rate fluctuations as the financial results of foreign subsidiaries are translated into U.S. dollars in consolidation. As exchange rates vary, transaction gains and losses may vary from expectations and adversely impact overall expected profitability. Our gains due to foreign exchange rate fluctuations were approximately \$124,000 for the first nine months of fiscal 2005 compared to losses of approximately \$151,000 during the same period last year.

*Interest Rate Risk.* The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest in highly liquid and high quality debt securities. To minimize the exposure due to adverse shift in the general level of U.S. interest rates we invest in short-term securities that have an average maturity of one year or less. Due to the short-term nature of our investments, we believe that there is no material risk exposure.

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

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**ITEM 4. CONTROLS AND PROCEDURES**

- (a) Evaluation of Disclosure Controls and Procedures. As of September 30, 2005 (the Evaluation Date ), Actuate carried out an evaluation under the supervision and with the participation of Actuate management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of Actuate s disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the Exchange Act). There are inherent limitations to the effectiveness of any system of disclosure controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable, not absolute, assurance of achieving their control objectives. Subject to these limitations, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the Evaluation Date, the disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the reports Actuate files and submits under the Exchange Act is recorded, processed, summarized and reported as and when required.
- (b) Changes in Internal Controls. There were no changes in Actuate s internal control over financial reporting during the three months ended September 30, 2005 that have materially affected, or are reasonably likely to materially affect, Actuate s internal control over financial reporting.

**Table of Contents*****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 2. Unregistered Sales of Equity Securities and Use of Proceeds**

The table below sets forth information regarding repurchases of Actuate common stock by Actuate during the three months ended September 30, 2005.

| <u>Period</u>                                | <u>Total<br/>Number of<br/>Shares<br/>Purchased</u> | <u>Average<br/>price paid<br/>per<br/>share</u> | <u>Total number of<br/>shares purchased<br/>as part of publicly<br/>announced<br/>programs (1)</u> | <u>Maximum dollar<br/>value of shares<br/>that may yet be<br/>purchased under<br/>the program (1)</u> |
|--|---|---|--|---|
| <u><i>Month #1</i></u>                       |   |   |  |   |
| July 1, 2005 through July 31, 2005           |   |   |  |   |
| <u><i>Month #2</i></u>                       |   |   |  |   |
| August 1, 2005 through August 31, 2005       | 863,564   | \$ 2.30   | 863,564  |   |
| <u><i>Month #3</i></u>                       |   |   |  |   |
| September 1, 2005 through September 30, 2005 |   |   |  |   |
| <b>Total</b>                                 | <b>863,564</b>                                      | <b>\$ 2.30</b>                                  | <b>863,564</b>   |   |

- (1) In October 2005, the Board of Directors approved an on-going extension of the Company's stock repurchase program, which was originally announced in September 2001 and has been extended from time to time. This extension authorized management to make additional repurchases. Under this repurchase program, the Company is authorized to repurchase Actuate common stock at varying amounts, in an amount not to exceed cash flow from operations during the prior quarter. The actual amount to be repurchased is approved in advanced each quarter by the Board. From the end of the third quarter of fiscal year 2005 through October 31, 2005, the Company has repurchased a total of 300,000 shares in the open market under this repurchase plan for a value totaling \$876,000.

**Item 6. Exhibits**

31.1 Rule 13a-14(a)/15d-14(a) Certification of the Chief Executive Officer

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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 9, 2005

By: /s/ DANIEL A. GAUDREAU

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Daniel A. Gaudreau  
Chief Financial Officer, Senior Vice

President of Finance (Principal Financial  
and Accounting Officer)