ACTUATE CORP
Form 10-Q
August 06, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2010

OR

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

For the transition period from to

Commission File No. 0-24607

Actuate Corporation

(Exact name of Registrant as specified in its charter)

Delaware	**94-3193197**
(State of incorporation)	**(I.R.S. Employer Identification No.)**

2207 Bridgepointe Parkway, Suite 500

San Mateo, California 94404

(650) 645-3000

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ¨ No ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of large accelerated filer , accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ¨	Accelerated filer x
Non-accelerated filer ¨ (Do not check if smaller reporting company)	Smaller reporting company ¨

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

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

Title of Class	**Outstanding as of June 30, 2010**
Common Stock, par value $.001 per share	44,433,085

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Actuate Corporation

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Part I. Financial Information

Item 1. Financial Statements

ACTUATE CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands except share and per share data)

(unaudited)

	June 30, 2010	December 31, 2009
ASSETS		
Current assets:		
Cash and cash equivalents	$ 37,456	$ 53,173
Short-term investments	26,144	22,358
Accounts receivable, net of allowance of $539 and $749 at June 30, 2010 and December 31, 2009, respectively	19,998	33,176
Other current assets	5,995	5,667
Total current assets	89,593	114,374
Property and equipment, net	3,610	3,786
Goodwill	46,389	36,114
Other purchased intangibles, net	17,207	900
Non-current deferred tax assets	14,367	12,920
Other assets	1,841	1,670
	$ 173,007	$ 169,764
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 2,008	$ 1,372
Restructuring liabilities	2,686	2,796
Accrued compensation	4,995	4,918
Other accrued liabilities	6,293	5,330
Income tax payable		845
Deferred revenue	41,911	44,999
Total current liabilities	57,893	60,260
Long-term liabilities:		
Note payable	40,000	30,000
Other liabilities	585	769
Long-term deferred revenue	1,130	1,288
Long term income tax payable	672	806
Restructuring liabilities, less current portion		622
Total long-term liabilities	42,387	33,485
Non-controlling interest in subsidiary	622	617

Stockholders equity:		
Preferred stock, $0.001 par value, issuable in series: 5,000,000 shares authorized; none issued and outstanding		
Common stock, $0.001 par value, 100,000,000 shares authorized; issued 79,584,302 and 78,571,349 shares, respectively; outstanding 44,433,085 and 45,462,744 shares, respectively	44	45
Additional paid-in capital	183,848	177,577
Treasury stock, at cost 35,151,217 shares and 33,108,605 shares, respectively	(137,336)	(127,338)
Accumulated other comprehensive loss	(739)	(205)
Retained earnings	26,288	25,323
Total stockholders equity	72,105	75,402
	$ 173,007	$ 169,764

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

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ACTUATE CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share data)

(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Revenues:				
License fees	$ 10,030	$ 8,534	$ 19,622	$ 17,287
Maintenance	17,962	19,178	35,960	37,549
Professional services	2,298	1,829	3,782	3,961
Total revenues	30,290	29,541	59,364	58,797
Costs and expenses:				
Cost of license fees	498	236	938	436
Cost of services	5,099	4,793	9,626	9,533
Sales and marketing	10,177	10,492	19,701	21,202
Research and development	6,348	5,208	12,270	10,258
General and administrative	7,389	4,557	14,372	9,632
Amortization of other purchased intangibles	461	170	822	340
Restructuring charges	277	70	664	111
Total costs and expenses	30,249	25,526	58,393	51,512
Income from operations	41	4,015	971	7,285
Interest and other income (expense), net	(382)	112	(885)	584
Interest expense	(455)	(355)	(872)	(710)
Income (loss) before income taxes	(796)	3,772	(786)	7,159
Provision (benefit) for income taxes	(202)	972	(1,751)	1,556
Net income (loss)	$ (594)	$ 2,800	$ 965	$ 5,603
Basic net income (loss) per share	$ (0.01)	$ 0.06	$ 0.02	$ 0.13
Shares used in basic per share calculation	44,947	45,030	45,171	44,745
Diluted net income (loss) per share	$ (0.01)	$ 0.06	$ 0.02	$ 0.11
Shares used in diluted per share calculation	44,947	49,235	49,481	48,779

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

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ACTUATE CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands, unaudited)

	Six Months Ended June 30, 2010	Six Months Ended June 30, 2009
Operating activities		
Net income	$ 965	$ 5,603
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock based compensation expense related to stock options and employee stock purchase plan	2,996	3,763
Tax benefits from stock-based compensation	(500)	(1,220)
Amortization of other purchased intangibles	1,388	450
Amortization of debt issuance cost	143	140
Depreciation	948	1,108
Change in valuation allowance on deferred tax assets	(1,652)	(575)
Accretion/amortization on short-term debt securities	89	170
Realized gain on Auction Rate Securities (ARS)	(1,032)	
Unrealized (gain)/loss on ARS	80	(788)
Realized loss on fair value of put option	1,032	
Unrealized (gain)/loss on fair value of put option	(93)	734
Changes in operating assets and liabilities, net of acquired assets and assumed liabilities:		
Accounts receivable, net of allowance	14,935	9,688
Other current assets	3,201	(242)
Accounts payable	(950)	(681)
Accrued compensation	(371)	(59)
Other accrued liabilities	(3,161)	(907)
Deferred tax assets, net of liabilities	331	(8)
Income taxes receivable	333	(577)
Income taxes payable	(789)	1,615
Other deferred liabilities	(184)	(155)
Restructuring liabilities	(872)	(1,739)
Deferred revenue	(4,777)	(3,248)
Net cash provided by operating activities	12,060	13,072
Investing activities		
Purchases of property and equipment	(462)	(662)
Release of restricted cash		229
Proceeds from sale and maturity of investments	12,588	8,053
Purchases of short-term investments	(15,274)	(10,783)
Acquisition of Xenos Group Inc., net of cash acquired	(27,343)	
Change in other current and non-current assets	(237)	(18)
Net cash used in investing activities	(30,728)	(3,181)
Financing activities		
Proceeds from the credit facility, net of issuance cost	9,986	
Tax benefit from exercise of stock options	500	1,220
Proceeds from issuance of common stock	2,960	2,797
Stock repurchases	(9,999)	(258)

Net cash provided by financing activities	3,447	3,759
Net increase (decrease) in cash and cash equivalents	(15,221)	13,650
Effect of exchange rates on cash and cash equivalents	(496)	66
Cash and cash equivalents at the beginning of the period	53,173	24,772
Cash and cash equivalents at the end of the period	$ 37,456	$ 38,488

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

The Company

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

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

Basis of Presentation

The Company has prepared the accompanying unaudited condensed consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual consolidated financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP). In management s opinion, the Company has made all adjustments (consisting only of normal, recurring adjustments, except as otherwise indicated) necessary to fairly present its financial position, results of operations and cash flows. The Company s interim period operating results do not necessarily indicate the results that may be expected for any other interim period or for the full fiscal year. These financial statements and accompanying notes should be read in conjunction with the consolidated financial statements and notes thereto in Actuate s Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed with the SEC on March 10, 2010.

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

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

As of June 30, 2010, Actuate owns approximately 88% of the outstanding voting stock of Actuate Japan Company Ltd. (Actuate Japan). The Company has consolidated the results of Actuate Japan from the date that it became the majority shareholder, which occurred in fiscal year 2000. During the first quarter of fiscal year 2009, we adopted new accounting guidance for non-controlling interests in subsidiaries as issued by the Financial Accounting Standards Board (FASB). The new accounting guidance establishes accounting and reporting standards for the non-controlling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a non-controlling interest in a subsidiary, which is sometimes referred to as a minority interest, is a third-party ownership interest in the consolidated entity that should be reported as a component of equity in the consolidated financial statements. Among other requirements, the new guidance requires the consolidated statement of income to be reported at amounts that include the amounts attributable to both the parent and the non-controlling interest. The new guidance also requires disclosure on the face of the consolidated statement of income of the amounts of consolidated net income attributable to the parent and to the non-controlling interest. The adoption of this accounting guidance did not have a material impact on our consolidated financial statements.

Actuate Japan s financial results are reflected in each revenue, cost of revenue and expense category in the consolidated statement of income. Through June 30, 2010, the operating performance and liquidity requirements of Actuate Japan had not been material to the Company s results of operations or financial condition. Although the Company plans to maintain and expand selling and marketing activities in Japan to add new customers, the future liquidity requirements of Actuate Japan are not expected to be significant.

ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

Revenue Recognition

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

For sales to end-user customers, Actuate recognizes license revenues when a license agreement has been signed by both parties or a definitive agreement has been received from the customer, the product has been physically shipped or electronically made available, there are no unusual uncertainties surrounding the product acceptance, the fees are fixed or determinable, collectability is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement. Vendor-specific objective evidence of fair value of sales to end users is based on the price charged when an element is sold separately. Actuate has not established vendor-specific objective evidence of fair value for its licenses. Therefore, the Company recognizes revenues from arrangements with multiple elements involving software licenses under the residual method which means the fair value of the undelivered elements is deferred while the remaining value of the arrangement is allocated to the delivered elements. If the license agreement contains payment terms that would indicate that the fee is not fixed or determinable, revenues are recognized as the payments become due and payable, assuming that all other revenue recognition criteria are met.

Actuate enters into reseller and distributor arrangements that typically give such distributors and resellers the right to distribute its products to end-users headquartered in specified territories. Actuate recognizes license revenues from arrangements with U.S. resellers and distributors when there is persuasive evidence of an arrangement with the reseller or distributor, the product has been shipped, the fees are fixed or determinable, and collectability is probable and vendor-specific objective evidence of fair value exists to allocate the fee to the undelivered elements of the arrangement. Actuate recognizes license revenues from arrangements with international resellers and distributors upon receipt of evidence of sell-through and when all other revenue recognition criteria have been met. If it is not practical to obtain evidence of sell-through, the Company defers revenues until the end-user has been identified and cash has been received. In some instances there is a timing difference between when a reseller completes its sale to the end-user and the period in which Actuate receives the documentation required for revenue recognition. Because Actuate delays revenue recognition until the reporting period in which the required documentation is obtained, it may recognize revenue in a period subsequent to the period in which the reseller completes the sale to its end-user.

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

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

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

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

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

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

Share-Based Compensation

The Company has various types of share-based compensation plans. These plans are administered by the compensation committee of the Board of Directors, which selects persons to receive awards and determines the number of shares subject to each award and the terms, conditions, performance measures and other provisions of the award. Readers should refer to Note 8 of the Company s consolidated financial statements in the Annual Report on Form 10-K for the fiscal year ended December 31, 2009, for additional information related to these share-based compensation plans. Share-based compensation expense and the related income tax benefit in the Condensed Consolidated Statements of Operations in connection with stock options, restricted stock units and the Employee Stock Purchase Plan (ESPP) for the six months ended June 30, 2010 and 2009 were as follows (in thousands):

	Three Months Ended		Six Months Ended	
	June 30, 2010	June 30, 2009	June 30, 2010	June 30, 2009
Stock Options	$ 1,334	$ 1,779	$ 2,575	$ 3,128
Restricted stock units	104		170	
ESPP	114	379	251	635
Total share-based compensation	$ 1,552	$ 2,158	$ 2,996	$ 3,763
Income tax benefit	$ 508	$ 666	$ 985	$ 1,168

The fair value of each option award is estimated on the date of grant using the Black-Scholes-Merton option pricing model. We estimated the expected term of options granted by analyzing actual historical experience of exercises and cancellations under our plan. We also looked at the average length of time in which our current outstanding options are expected to be exercised or cancelled based on past experience and the vesting and contractual term. We estimated the volatility of our common stock by using historical volatility over the calculated expected term. We based the risk-free interest rate that we use in the option valuation model on the published Treasury rate. We do not anticipate paying any cash dividends in the foreseeable future and therefore used an expected dividend yield of zero in the option valuation model. The assumptions used to estimate the fair value of stock options granted and stock purchase rights granted under our Employee Stock Purchase Plan (the Purchase Plan) for the three and six months ended June 30, 2010 and 2009 are as follows:

	Options Six Months Ended		ESPP Six Months Ended	
	June 30, 2010	June 30, 2009	June 30, 2010	June 30, 2009
Volatility	54.17 54.73%	57.99 59.03%	40.15%	94.69%
Expected term (years)	5.66 5.71	5.49 5.52	1.25	1.25
Risk free interest rate	2.125 2.25%	1.75 2.625%	0.35%	0.62%
Expected dividend yield	0%	0%	0%	0%
Forfeiture rate	2%	3 4%	N/A	N/A

Effective January 2010, restricted stock units (RSUs) were granted to senior management as part of the Company s annual incentive compensation program under the Amended and Restated 1998 Equity Incentive Plan. RSUs are valued based on the closing price of the Company s common stock on the grant date. In general, restricted stock units vest over four years with annual cliff vesting and are subject to the employees continuing service to the Company. For each restricted stock unit granted under the 1998 Plan, a share reserve ratio is applied for the purpose of determining the remaining number of shares reserved for future grants under the plan. The share reserve ratio is 2:1 for each restricted stock unit granted, and an equivalent of 2 shares will be deducted from the share reserve for each restricted stock unit issued. Likewise, each forfeited restricted stock unit increases the number of shares available for issuance by the applicable rate at the time of forfeiture. As of June 30, 2010, a total of 188,750 RSUs were issued and granted to the Company s senior management and non-employee Board of Directors. This program is expected to result in an incremental increase in the Company s stock-based compensation expense for the remainder of fiscal year 2010 and beyond.

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

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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 (loss) per share (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	**2009**	**2010**	**2009**
Weighted-average common shares outstanding	44,947	45,030	45,171	44,745
Weighted-average dilutive common equivalent shares under the treasury stock method		4,205	4,310	4,034
Weighted-average common shares used in computing diluted net income (loss) per share	44,947	49,235	49,481	48,779

All outstanding stock options and shares subject to repurchase have been excluded from the calculation of diluted net loss per share in the three months ended June 30, 2010, because all such stock options are anti-dilutive. Under the treasury stock method, stock options with exercise prices exceeding the average share price of the Company s common stock during the applicable period are excluded from the diluted earnings per share computation for the six months ending June 30, 2010. The weighted-average number of shares excluded from the calculation of diluted net income (loss) was 17,103,995 and 6,282,250 in the three and six months ended June 30, 2010, respectively. Dilutive restricted stock units excluded from the diluted net loss per share computation was 27,656 in the three months ending June 30, 2010. In the three and six months ended in June 30, 2009, the Company excluded 8,180,554 and 8,169,723 stock options from its calculation of weighted-average common shares used in computing dilutive net income per share. Such stock options, had they been dilutive, would have been included in the computation of diluted net income per share.

The weighted average exercise price of excluded stock options was $3.97 and $5.85 for the three and six months ended June 30, 2010, respectively. The weighted average exercise price of excluded stock options was $5.45 and $5.48 for the three and six months ended June 30, 2009, respectively.

Income Taxes

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

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

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

We continue to believe there is sufficient evidence to support the utilization of certain deferred tax assets. If sufficient positive evidence exists and it is more likely than not that the benefit will be realized with respect to the remaining deferred tax assets, we will release the valuation allowance. This adjustment to the valuation allowance would decrease tax expense. During the first quarter of fiscal 2010, we released $1.6 million of a valuation allowance on Canadian deferred tax assets. Likewise, if there is a reduction in the projection of future U.S. and foreign income, we may need to increase the valuation allowance. Any increase in the valuation allowance would increase tax expense in the period such a determination was made.

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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

Other Comprehensive Income (loss)

Other comprehensive income (loss) includes currency translation adjustments and unrealized losses on investments that are not included in net income, but rather are recorded directly in stockholders equity. Comprehensive income (loss) during the three and six months of fiscal 2010 and 2009 was comprised of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Net income (loss)	$ (594)	$2,800	$ 965	$ 5,603
Foreign currency translation gain (loss)	(435)	956	(496)	66
Unrealized gain (loss) on investments	(2)	264	(38)	75
Total comprehensive income (loss)	$ (1,031)	$4,020	$ 431	$ 5,744

The Company realized approximately $435,000 and $496,000 in foreign currency translation losses in the second quarter and the first half of fiscal 2010, respectively. These losses related primarily to the translation and consolidation of its European operations. These losses were significantly higher during the second quarter and the first half of fiscal 2010 as compared to the gains reported in fiscal 2009 due primarily to the weakness of the U.S. Dollar against the Swiss Franc and the Canadian dollar during fiscal 2010.

Recent Accounting Pronouncements

In January 2010, the Financial Accounting Standards Board (FASB) issued guidance to amend the disclosure requirements related to recurring and nonrecurring fair value measurements. The guidance requires new disclosures on the transfers of assets and liabilities between Level 1 (quoted prices in active market for identical assets or liabilities) and Level 2 (significant other observable inputs) of the fair value measurement hierarchy, including the reasons and the timing of the transfers. Additionally, the guidance requires a roll forward of activities on purchases, sales, issuance, and settlements of the assets and liabilities measured using significant unobservable inputs (Level 3 fair value measurements). The guidance became effective for us with the reporting period beginning January 1, 2010, except for the disclosure on the roll forward activities for Level 3 fair value measurements, which will become effective for us with the reporting period beginning January 1, 2011. Adoption of this new guidance did not have a material impact on our financial statements. See Note 4 Fair Value Measurements of Financial Assets and Liabilities.

2. Acquisition of Xenos Group Inc.

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

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

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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

		In U.S. Dollars
Acquisition of approximately 10.0 million shares of outstanding common stock of Xenos at CAD 3.50 per share in cash	$	33,149
Net payout for exercise of 707,000 of outstanding employee options at CAD 3.50 per option, (net of exercise price)		1,124
Estimated fair value of 30,750 earned stock options assumed and converted		60
Total purchase price	$	34,333

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

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

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

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

Preliminary Purchase Price Allocation

Under the purchase accounting method, the total preliminary purchase price was allocated to Xenos s net tangible and intangible assets based upon their estimated fair values as of February 1, 2010. The excess purchase price over the value of the net tangible and identifiable intangible assets was recorded as goodwill.

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

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

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

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

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

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

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

3. Investment in Actuate Japan

Non-controlling (minority) Interest The minority shareholder of Actuate Japan has a non-expiring option to put its equity interest (non-controlling interest) in Actuate Japan to the Company and the Company has the option to call the Non-controlling interest. The redeemable non-controlling interest as of June 30, 2010 was approximately 12% of the total equity interest. If the non-controlling interest shareholder chose to put these remaining shares to the Company, Actuate would be required to pay approximately $622,000 to purchase these shares. The Company measures and discloses a redeemable non-controlling interest in accordance with the policy discussed above at the calculated redemption value of the put option embedded in the non-controlling interest. The non-controlling shareholder is also a distributor of Actuate products in Japan, although the volume of revenues sold through this distributor has historically been immaterial to Actuate Corporation. The Company consolidated 100% of the operating results and all investments in the subsidiary are eliminated in consolidation. Through June 30, 2010, the operating performance and liquidity requirements of Actuate Japan had not been material to the Company s results of operations or financial condition. Although the Company plans to maintain and expand our selling and marketing activities in Japan to add new customers, the future liquidity requirements of Actuate Japan is not expected to be significant in the near future. As of the date of this filing, the remaining non-controlling shareholder has not notified the Company of any intent to exercise its put option.

4. Fair Value Measurements of Financial Assets and Liabilities

The Company adheres to FASB s authoritative guidance related to the fair value measurements of financial instruments. Under this standard, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. For certain of our financial instruments, including cash and cash equivalents, short-term investments, accounts receivable, accounts payable, and other current liabilities the carrying amounts approximate their fair value due to the relatively short maturity of these balances. We also believe that the carrying value of our note payable approximates fair value as the interest rate on this note is based on a floating market rate.

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

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

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

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

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ACTUATE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

	Fair value of investments as of June 30, 2010			
	Total	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds (1)	$ 8,216	$ 8,216	$	$
Term deposits (1)	11,798	11,798		
Corporate bonds (2)	14,141		14,141	
Federal and municipal obligations (2)	2,003		2,003	
ARS (2)	9,018			9,018
Put option (2)	982			982
	$ 46,158	$ 20,014	$ 16,144	$ 10,000

	Fair value of investments as of December 31, 2009			
	Total	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds (1)	$ 29,438	$ 29,438	$	