

ACTUATE CORP
Form S-8 POS
July 31, 2009

Table of Contents

As filed with the United States Securities and Exchange Commission on July 31, 2009

Registration No. 333-151004

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM S-8**

**(Post-Effective Amendment No. 1)
REGISTRATION STATEMENT**

Under

The Securities Act of 1933

ACTUATE CORPORATION

(Exact name of registrant as specified in its charter)

DELAWARE

**(State or other jurisdiction of
incorporation or organization)**

94-3193197

**(IRS Employer
Identification No.)**

**2207 Bridgepointe Parkway, Suite 500
San Mateo, California 94404
(650) 645-3000**

(Address of principal executive offices) (Zip Code)

**ACTUATE CORPORATION AMENDED AND RESTATED 1998 EQUITY INCENTIVE PLAN
ACTUATE CORPORATION 1998 EMPLOYEE STOCK PURCHASE PLAN**

(Full title of the Plans)

PETER I. CITTADINI

CHIEF EXECUTIVE OFFICER AND PRESIDENT

ACTUATE CORPORATION

**2207 Bridgepointe Parkway, Suite 500
San Mateo, California 94404**

(Name and address of agent for service)

(650) 645-3000

(Telephone number, including area code, of agent for service)

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 the definitions 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

Non-accelerated filer

Smaller reporting
company

(Do not check if a smaller reporting company)

Table of Contents

EXPLANATORY NOTE:

On June 11, 2009, Actuate Corporation (the Registrant) filed a Form S-8 Registration Statement, Registration No. 333-151004 (the Registration Statement), pursuant to which the Registrant registered 2,800,000 shares of its Common Stock for issuance under its Amended and Restated 1998 Equity Incentive Plan and 600,000 shares of its Common Stock for issuance under its 1998 Employee Stock Purchase Plan.

Registrant is hereby filing this Post-Effective Amendment No. 1 to the Registration Statement to (i) de-register 591,518 shares of Common Stock previously registered for issuance under in the Amended and Restated 1998 Equity Incentive Plan to correctly reflect the number of shares available for issuance under such plan and (ii) to file a revised Exhibit 5 and Exhibit 23.1.

TABLE OF CONTENTS

PART II

Item 8. Exhibits

SIGNATURES

EXHIBIT INDEX

EX-5

EX-23.1

Table of Contents

**PART II
INFORMATION REQUIRED IN REGISTRATION STATEMENT**

Item 8. Exhibits

Exhibit

| Number | Exhibit |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | Instrument Defining Rights of Stockholders. Reference is made to Registrant's Registration Statement No. 000-24607 on Form 8-A, which is incorporated herein by reference pursuant to Item 3(a) of this Registration Statement.* |
| 5 | Opinion and consent of Morgan, Lewis & Bockius LLP. |
| 23.1 | Consent of Independent Registered Public Accounting Firm |
| 23.2 | Consent of Morgan, Lewis & Bockius LLP is contained in Exhibit 5. |
| 24 | Power of Attorney. Reference is made to page II-3 of this Registration Statement.* |
| 99.1 | Actuate Corporation Amended and Restated 1998 Equity Incentive Plan, which is incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333.-55741).* |
| 99.2 | Actuate Corporation 1998 Employee Stock Purchase Plan, which is incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333.-55741).* |

* Previously filed

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Mateo, State of California on this 31st day of July, 2009.

ACTUATE CORPORATION

By: /s/ Daniel A. Gaudreau
 Daniel A. Gaudreau, Senior Vice
 President,
 Operations and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|---------------|
| */s/ Nicolas C. Nierenberg Nicolas C. Nierenberg | Chairman of the Board and Chief Architect | July 31, 2009 |
| */s/ Peter I. Cittadini Peter I. Cittadini | President, Chief Executive Officer and Director (Principal Executive Officer) | July 31, 2009 |
| /s/ Daniel A. Gaudreau Daniel A. Gaudreau | Senior Vice President, Operations and Chief Financial Officer (Principal Financial and Accounting Officer) | July 31, 2009 |
| */s/ George B. Beitzel George B. Beitzel | Director | July 31, 2009 |
| */s/ Kenneth E. Marshall Kenneth E. Marshall | Director | July 31, 2009 |
| */s/ Arthur C. Patterson Arthur C. Patterson | Director | July 31, 2009 |
| */s/ Steven D. Whiteman | Director | July 31, 2009 |

Steven D. Whiteman

Table of Contents

The undersigned by signing his name hereto, does hereby sign and execute this Post-Effective Amendment No. 1 to this Registration Statement on behalf of the above named officers and directors of the Company pursuant to the Power of Attorney executed by such officers and directors previously filed with the Securities and Exchange Commission.

*By: /s/ Daniel A. Gaudreau

Daniel A. Gaudreau,
Attorney-in-fact

Table of Contents

EXHIBIT INDEX

Exhibit

| Number | Exhibit |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | Instrument Defining Rights of Stockholders. Reference is made to Registrant's Registration Statement No. 000-24607 on Form 8-A, which is incorporated herein by reference pursuant to Item 3(a) of this Registration Statement.* |
| 5 | Opinion and consent of Morgan Lewis & Bockius LLP. |
| 23.1 | Consent of Independent Registered Public Accounting Firm. |
| 23.2 | Consent of Morgan Lewis & Bockius LLP is contained in Exhibit 5. |
| 24 | Power of Attorney. Reference is made to page II-3 of this Registration Statement.* |
| 99.1 | Actuate Corporation Amended and Restated 1998 Equity Incentive Plan, which is incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333.-55741).* |
| 99.2 | Actuate Corporation 1998 Employee Stock Purchase Plan, which is incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333.-55741).* |

* Previously filed