

ACTUATE CORP  
Form S-8  
February 04, 2010

As filed with the Securities and Exchange Commission on February 4, 2010  
Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**FORM S-8**  
**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**  
(I.R.S. Employer  
Identification Number)

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

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

**2000 Amended Stock Option Plan of Xenos Group Inc.**  
(Full title of the plan)

**Peter I. Cittadini**  
**Chief Executive Officer and  
President**

**Actuate Corporation**  
**2207 Bridgepointe Parkway,  
Suite 500**

**San Mateo, California 94404  
(650) 645-3000**

(Name, address, and telephone number, including area code, of agent for service)

*Copy to:*

**Robert T. Ishii**  
**Wilson Sonsini Goodrich & Rosati**  
**Professional Corporation**  
**One Market Street**  
**Spear Tower, Suite 3300**  
**San Francisco, California 94105**  
**(415) 947-2000**

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)

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$0.001 per share 2000				
Amended Stock Option Plan of Xenos Group Inc.	19,025	4.86	92,461.50	6.59
<b>TOTAL:</b>	<b>19,025</b>			<b>6.59</b>

(1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of Common Stock.

- (2) Calculated solely for purposes of this offering under Rule 457(c) and Rule 457(h) of the Securities Act of 1933, as amended, on the basis of the average of the high and low prices per share of Common Stock of Actuate Corporation as reported on the Nasdaq Global Select Market on February 3, 2010.
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**ACTUATE CORPORATION  
REGISTRATION STATEMENT ON FORM S-8  
PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the 1933 Act ). In accordance with the rules and regulations of the Securities and Exchange Commission (the SEC ) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

**Item 2. Registration Information and Employee Plan Annual Information.**

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the 1933 Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the 1933 Act.

**PART II**  
**INFORMATION REQUIRED IN REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

Actuate Corporation (the Registrant) hereby incorporates by reference into this Registration Statement the following documents previously filed with the SEC:

- (a) The Registrant's Form 10-K filed with the SEC for the fiscal year ended December 31, 2008 filed with the SEC on March 12, 2009;
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the 1934 Act) since the end of the fiscal year covered by the Registrant's Form 10-K referred to in (a) above; and
- (c) The Registrant's Registration Statement No. 000-24607 on Form 8-A filed with the SEC on July 10, 1998 pursuant to Section 12 of the 1934 Act in which there is described the terms, rights and provisions applicable to the Registrant's outstanding Common Stock.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicate that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Registrant is a Delaware corporation. Section 145 of the General Corporation Law of the State of Delaware (the DGCL) authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the 1933 Act. The Registrant's Certificate of Incorporation provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of their fiduciary duty as directors to the Registrant and its stockholders. This provision in the Certificate of Incorporation does not eliminate the fiduciary duty of the directors, and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. The Registrant has entered into Indemnification Agreements with its officers and directors. The Indemnification

Agreement