

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

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FILER

ACTUATE CORP

CIK: **1062478** | IRS No.: **943193197** | State of Incorporation: **DE** | Fiscal Year End: **1231**
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Mailing Address

701 GATEWAY BLVD
SUITE
SOUTH SAN FRANCISCO CA
94080

Business Address

701 GATEWAY BLVD
SUITE
SOUTH SAN FRANCISCO CA
94080
6504252300

**UNITED STATES
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
(IRS Employer
Identification No.)

**701 Gateway Boulevard
South San Francisco, California 94080
(650) 837-2000**
(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
701 Gateway Boulevard
South San Francisco, California 94080**
(Name and address of agent for service)

(650) 837-2000
(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

<u>Title of Securities to be Registered</u>	<u>Amount to be Registered (1)</u>	<u>Proposed Maximum Offering Price per Share (2)</u>	<u>Proposed Maximum Aggregate Offering Price (2)</u>	<u>Amount of Registration Fee</u>
Actuate Corporation Amended and Restated 1998 Equity Incentive Plan				
Common Stock (par value \$.001)	2,800,000	\$ 1.72	\$ 4,816,000	\$ 566.84
Actuate Corporation 1998 Employee Stock Purchase Plan				
Common Stock (par value \$.001)	600,000 shares	\$ 1.72	\$ 1,032,000	\$ 121.47
 Total Amount to be Registered	 3,400,000	 Aggregate Registration Fee		 \$ 688.31

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- (1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the Amended and Restated 1998 Equity Incentive Plan and 1998 Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock of Actuate Corporation.
- (2) Calculated solely for purposes of this offering under 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 National Market on April 27, 2005.
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PART II

INFORMATION REQUIRED IN THE 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 Securities and Exchange Commission (the “SEC”):

- (a) The Registrant’s Form 10-K filed with the SEC for the fiscal year ended December 31, 2004 filed with the SEC on March 16, 2005, as amended by Form 10-K/A filed with the SEC on May 2, 2005.
- (b) The Registrant’s Registration Statement No. 0-24607 on Form 8-A filed with the SEC on July 10, 1998 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the “34 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 indicates that all securities offered hereby have been sold or which deregisters 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.

Item 4. Description of Securities

Not Applicable.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law 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 Securities Act of 1933 (“1933 Act”). The Registrant’s Bylaws provide for mandatory indemnification of its directors and officers and permissible indemnification of employees and other agents to the maximum extent permitted by the Delaware General Corporation Law. 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 Agreements provide the Registrant’s officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law.

Item 7. Exemption from Registration Claimed

Not Applicable.

Item 8. Exhibits

Exhibit

<u>Number</u>	<u>Exhibit</u>
4	Instrument Defining Rights of Stockholders. Reference is made to Registrant' s Registration Statement No. 0-24607 on Form 8-A, which is incorporated herein by reference pursuant to Item 3(b) of this Registration Statement.
5	Opinion and consent of Morgan Lewis & Bockius LLP.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.3	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.

Item 9. Undertakings

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act, (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference in this Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the Registrant' s 1998 Equity Incentive Plan and 1998 Employee Stock Purchase Plan.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant' s annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the 1933 Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

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 South San Francisco, State of California on this 2nd day of May, 2005.

ACTUATE CORPORATION

By:

/S/ Daniel A. Gaudreau

Daniel A. Gaudreau, Senior Vice President,
Finance and Administration and Chief Financial
Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned officers and directors of Actuate Corporation, a Delaware corporation, do hereby constitute and appoint Peter I. Cittadini and Daniel A. Gaudreau, and either of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and either one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

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.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/S/ Nicolas C. Nierenberg</u> Nicolas C. Nierenberg	Chairman of the Board and Chief Architect	May 2, 2005
<u>/S/ Peter I. Cittadini</u> Peter I. Cittadini	President, Chief Executive Officer and Director (Principal Executive Officer)	May 2, 2005
<u>/S/ Daniel A. Gaudreau</u> Daniel A. Gaudreau	Senior Vice President, Finance and Administration and Chief Financial Officer (Principal Financial and Accounting Officer)	May 2, 2005

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> /S/ George B. Beitzel	Director	May 2, 2005
George A. Beitzel		
<hr/> /S/ Kenneth E. Marshall	Director	May 2, 2005
Kenneth E. Marshall		
<hr/> /S/ Arthur C. Patterson	Director	May 2, 2005
Arthur C. Patterson		
<hr/> /S/ Steven D. Whiteman	Director	May 2, 2005
Steven D. Whiteman		

EXHIBIT INDEX

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5	Opinion and consent of Morgan Lewis & Bockius LLP.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
23.3	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.

April 29, 2005

Actuate Corporation
701 Gateway Boulevard
South San Francisco, CA 94080

Re:

Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Actuate Corporation, a Delaware corporation (the "Company"), in connection with the registration on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, of: (i) 2,800,000 shares of the Company's common stock reserved for issuance under the Company's Amended and Restated 1998 Equity Incentive Plan (the "Incentive Plan") and (ii) 600,000 shares of the Company's common stock reserved for issuance under the Company's 1998 Employee Stock Purchase Plan (the "Purchase Plan").

This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

We have reviewed the Company's charter documents and the corporate proceedings taken by the Company in connection with the establishment and the amendment of the Incentive Plan and the Purchase Plan. Based on such review, we are of the opinion that, if, as and when the shares of the Company's common stock are issued and sold (and the consideration therefor received) pursuant to the provisions of (a) duly authorized stock option agreements or duly authorized direct stock issuances under the Incentive Plan and in accordance with the Registration Statement, or (b) duly authorized stock purchase rights under the Purchase Plan and in accordance with the Registration Statement, such shares will be duly authorized, legally issued, fully paid and nonassessable.

We consent to the filing of this opinion letter as Exhibit 5 to the Registration Statement.

This opinion letter is rendered as of the date first written above and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Incentive Plan, the Purchase Plan, or the shares of the Company's common stock issuable under such plans.

Very truly yours,

/s/ Morgan, Lewis & Bockius LLP

MORGAN, LEWIS & BOCKIUS LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders

Actuate Corporation:

We consent to the use of our report dated March 16, 2005, with respect to the consolidated balance sheet as of December 31, 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for the year then ended, incorporated by reference herein, which report appears in the December 31, 2004 annual report on Form 10-K of Actuate Corporation, and our report dated April 28, 2005, with respect to management' s assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2004, incorporated by reference herein, which report appears in the December 31, 2004 amended annual report on Form 10-K/A of Actuate Corporation.

Our report dated April 28, 2005, on management' s assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2004, expresses our opinion that Actuate Corporation did not maintain effective internal control over financial reporting as of December 31, 2004 because of the effect of a material weakness on the achievement of the objectives of the control criteria and contains an explanatory paragraph that states that the Company' s policies and procedures did not require review and approval by the relevant senior accounting personnel at the parent company level of journal entries for material nonrecurring transactions originating at the foreign subsidiary level. The absence of this control resulted in a failure in the Company' s year-end financial statement close process to ensure that original assumptions made in determining the amount of a restructuring charge had not changed as of year-end. As a result of this deficiency, a material error in accounting for the amount recorded for a restructuring charge originating at a foreign subsidiary level occurred.

/s/ KPMG LLP

Mountain View, California
April 28, 2005

Consent of Ernst and Young LLP, Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Actuate Corporation 1998 Equity Incentive Plan and 1998 Employee Stock Purchase Plan of our report dated January 26, 2004, with respect to the consolidated financial statements and schedule of Actuate Corporation for each of the years in the two year period ended December 31, 2003 included in its Annual Report (Form 10-K) for the year ended December 31, 2004, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Francisco, California
April 28, 2005