

ACTUATE CORP
Form 4
January 20, 2015

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
MARSHALL KENNETH E

(Last) (First) (Middle)

ACTUATE CORPORATION, 951
MARINERS ISLAND BLVD.

(Street)

SAN MATEO, CA 94404

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
ACTUATE CORP [BIRT]

3. Date of Earliest Transaction
(Month/Day/Year)
01/16/2015

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)

Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

| 1. Title of Security (Instr. 3) | 2. Transaction Date (Month/Day/Year) | 2A. Deemed Execution Date, if any (Month/Day/Year) | 3. Transaction Code (Instr. 8) | 4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5) | 5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4) | 6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4) | 7. Nature of Beneficial Ownership (Instr. 4) |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|--|
| | | | | (A) or (D) | Amount | | |
| | | | | Code | V | | |
| | | | | | Amount | | |
| | | | | (D) | Price | | |

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

| 1. Title of Derivative Security | 2. Conversion or Exercise | 3. Transaction Date (Month/Day/Year) | 3A. Deemed Execution Date, if any | 4. Transaction Code | 5. Number of Derivative Securities | 6. Date Exercisable and Expiration Date (Month/Day/Year) | 7. Title and Amount of Underlying Securities (Instr. 3 and 4) |
|---------------------------------|---------------------------|--------------------------------------|-----------------------------------|---------------------|------------------------------------|--|---|
| | | | | | | | |

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| (Instr. 3) | Price of Derivative Security | (Month/Day/Year) | (Instr. 8) | Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5) | | Date Exercisable | Expiration Date | Title | Amount or Number of Shares |
|-----------------------------|------------------------------|------------------|------------|---|-----------|------------------|-----------------|--------------|----------------------------|
| | | | | Code | V (A) (D) | | | | |
| Stock Option (right to buy) | \$ 4.03 | 01/16/2015 | D | | 20,000 | <u>(1)</u> | 05/30/2016 | Common stock | 20,000 |
| Stock Option (right to buy) | \$ 4.2 | 01/16/2015 | D | | 16,000 | <u>(2)</u> | 05/26/2020 | Common stock | 16,000 |
| Stock Option (right to buy) | \$ 4.6 | 01/16/2015 | D | | 25,000 | <u>(3)</u> | 05/21/2019 | Common stock | 25,000 |
| Stock Option (right to buy) | \$ 4.65 | 01/16/2015 | D | | 25,000 | <u>(4)</u> | 05/21/2018 | Common stock | 25,000 |
| Stock Option (right to buy) | \$ 5.47 | 01/16/2015 | D | | 16,000 | <u>(5)</u> | 05/25/2021 | Common stock | 16,000 |
| Stock Option (right to buy) | \$ 6.2 | 01/16/2015 | D | | 25,000 | <u>(6)</u> | 05/30/2017 | Common stock | 25,000 |
| Restricted stock units | \$ 0 | 01/16/2015 | D | | 16,000 | <u>(7)</u> | <u>(8)</u> | Common stock | 16,000 |
| Restricted stock units | \$ 0 | 01/16/2015 | D | | 8,000 | <u>(9)</u> | <u>(10)</u> | Common stock | 8,000 |
| Restricted stock units | \$ 0 | 01/16/2015 | D | | 16,000 | <u>(11)</u> | <u>(12)</u> | Common stock | 16,000 |
| Restricted stock units | \$ 0 | 01/16/2015 | D | | 8,000 | <u>(13)</u> | <u>(14)</u> | Common stock | 8,000 |
| Restricted stock units | \$ 0 | 01/16/2015 | D | | 8,000 | <u>(15)</u> | <u>(16)</u> | Common stock | 8,000 |

Reporting Owners

| Reporting Owner Name / Address | Relationships | | | |
|---|---------------|-----------|---------|-------|
| | Director | 10% Owner | Officer | Other |
| MARSHALL KENNETH E ACTUATE CORPORATION 951 MARINERS ISLAND BLVD. SAN MATEO, CA 94404 | X | | | |

Signatures

/s/ Kenneth E.
Marshall

01/20/2015

**Signature of Reporting
Person

Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Pursuant to the terms of the Agreement and Plan of Merger dated December 5, 2014 (the "Merger Agreement") by and among Actuate Corporation ("Actuate"), Open Text Corporation ("Parent") and Asteroid Acquisition Corporation ("Merger Sub"), on January 16, 2015, at the Effective Time (as defined in the Merger Agreement) by virtue of the Merger, each company stock option, whether or not vested and exercisable, that was outstanding and unexercised immediately prior to the Effective Time, accelerated and was automatically converted in to the right to receive the excess, if any, of the price per share of \$6.60 (the "Offer Price"), without interest thereon and less any applicable withholding taxes (the "Merger Consideration") over the exercise price per share of the stock option, subject to any applicable tax withholding.

(2) See footnote 1.

(3) See footnote 1.

(4) See footnote 1.

(5) See footnote 1.

(6) See footnote 1.

Pursuant to the Merger Agreement, on January 16, 2015, at the Effective Time by virtue of the Merger, (i) each time-vested restricted stock unit that had not vested as of the Effective Time (other than restricted stock units held by non-employee directors, which accelerated at the Effective Time), was converted into the right to receive the Merger Consideration in respect of each share underlying the restricted stock unit, subject to the same terms and conditions (including vesting and settlement schedules and taking into account any elective deferrals) as applied to such restricted stock unit immediately prior to the Effective Time, subject to any applicable tax withholding and (ii) each restricted stock unit that had vested but not settled (including each performance-vested restricted stock unit no longer subject to any performance conditions as of the date of the Merger Agreement), was converted into the right to receive the Merger Consideration in respect of each share underlying

(8) See footnote 7.

(9) See footnote 7.

(10) See footnote 7.

(11) See footnote 7.

(12) See footnote 7.

(13) See footnote 7.

(14) See footnote 7.

(15) See footnote 7.

(16) See footnote 7.

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