

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Form: 8-K

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

December 15, 2014

Date of Report (Date of earliest event reported)

Actuate Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State of
Incorporation)

0-24607
(Commission
File Number)

94-3193197
(IRS Employer
Identification Number)

951 Mariners Island Boulevard
San Mateo, California 94404
(Address of principal executive offices)(Zip Code)

(650) 645-3000
(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e)

Amendment to Change in Control Agreements

As previously disclosed, on July 24, 2014, Actuate Corporation (the "**Company**") entered into letter agreements with each of Peter I. Cittadini, the Company's Chief Executive Officer and President, and Daniel A. Gaudreau, the Company's Senior Vice President Operations and Chief Financial Officer to amend and restate their previous change in control severance benefit agreements to provide for certain severance benefits in connection with a change in control of the Company (the "**Change in Control Agreements**"). On December 5, 2014, the Company entered into an Amendment to Letter Agreement, which further amended the Change in Control Agreements, as previously disclosed in the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on December 5, 2014. On December 15, 2014, each of Mr. Cittadini and Mr. Gaudreau entered into an additional Amendment to Letter Agreement, which further amends the Change in Control Agreements (each, a "**CIC Amendment**").

Each of Mr. Cittadini's and Mr. Gaudreau's CIC Amendments corrects the Change in Control Agreements to align with the intention of the Company and each of Mr. Cittadini and Gaudreau to provide that the period of health care continuation coverage is 18 months following termination of employment as reflected in the prior version of the Change in Control Agreements in effect through their amendment and restatement on July 24, 2014. Following the CIC Amendments, the Change in Control Agreements provide that each of Mr. Cittadini and Mr. Gaudreau will be entitled to receive continued health care coverage at the Company's expense for a period of up to 18 months following the date he actually terminates employment with the Company or its affiliates (for any reason).

The foregoing descriptions of the CIC Amendments do not purport to be complete and are qualified in their entirety by reference to the CIC Amendments for each of Mr. Cittadini and Mr. Gaudreau, which are attached as Exhibits 10.1 and 10.2, respectively to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment to Letter Agreement, dated as of December 15, 2014, by and between Actuate Corporation and Peter I. Cittadini.
10.2	Amendment to Letter Agreement, dated as of December 15, 2014, by and between Actuate Corporation and Daniel A. Gaudreau.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Actuate Corporation

Date: December 15, 2014

By: /s/ Peter I. Cittadini

Name: Peter I. Cittadini

Title: President and Chief Executive Officer

INDEX TO EXHIBITS

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10.1	Amendment to Letter Agreement, dated as of December 15, 2014, by and between Actuate Corporation and Peter I. Cittadini.
10.2	Amendment to Letter Agreement, dated as of December 15, 2014, by and between Actuate Corporation and Daniel A. Gaudreau.

AMENDMENT TO LETTER AGREEMENT

This Agreement (the "Amendment") is entered into by and between Peter Cittadini (the "Executive") and Actuate Corporation, a Delaware corporation (the "Company") as of December 15, 2014.

WHEREAS, on July 24, 2014, the Company and the Executive amended and superseded the Change in Control Agreement, dated January 1, 2008 (the "Prior Agreement"), by and between the Company and the Executive, solely to (i) amend the definition of a Change in Control to include a liquidation or dissolution of the Company and clarify the definition with respect to a change in the composition of the Board, (ii) ensure that all forms of equity awards were covered by the Prior Agreement, (iii) amend the definition of Involuntary Termination to clarify the triggers based on reduction in salary or target bonus following a Change in Control and to provide that an Involuntary Termination included a breach of the Prior Agreement by the Company or the failure of a successor company to assume the Prior Agreement, and (iv) provide that the level of severance benefit under the Prior Agreement is not based on an executive's tenure with the Company (as so amended and restated, and as further amended on December 5, 2014, the "Agreement");

WHEREAS, the Agreement provides that the period of health care continuation coverage is 12 months following a qualifying Involuntary Termination, as compared to 18 months pursuant to the Prior Agreement;

WHEREAS, the parties intended that the period of health care continuation coverage provided for in the Agreement was to remain at 18 months as provided for in the Prior Agreement;

WHEREAS, the parties to the Agreement have agreed to amend the Agreement to align with the intention of such parties.

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration, receipt of which is hereby acknowledged, the Executive and the Company, intending to be legally bound, hereby agree as follows:

1. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.
2. Clause (i) of "Part Two—Section 3 (Continued Health Coverage)" of the Agreement is hereby amended so that the reference to "the twelve (12) month period" therein is replaced with a reference to "the eighteen (18) month period."

[Signature Page Follows]

IN WITNESS WHEREOF, the Company and the Executive have executed this Amendment on the day and year first above written.

EXECUTIVE

/s/ Peter I. Cittadini

Peter I. Cittadini

ACTUATE CORPORATION

By: /s/ Thomas E. McKeever

Name: Thomas E. McKeever

Title: Senior Vice President, General Counsel

[Signature Page to Amendment]

AMENDMENT TO LETTER AGREEMENT

This Agreement (the "Amendment") is entered into by and between Daniel A. Gaudreau (the "Executive") and Actuate Corporation, a Delaware corporation (the "Company") as of December 15, 2014.

WHEREAS, on July 24, 2014, the Company and the Executive amended and superseded the Change in Control Agreement, dated January 1, 2008 (the "Prior Agreement"), by and between the Company and the Executive, solely to (i) amend the definition of a Change in Control to include a liquidation or dissolution of the Company and clarify the definition with respect to a change in the composition of the Board, (ii) ensure that all forms of equity awards were covered by the Prior Agreement, (iii) amend the definition of Involuntary Termination to clarify the triggers based on reduction in salary or target bonus following a Change in Control and to provide that an Involuntary Termination included a breach of the Prior Agreement by the Company or the failure of a successor company to assume the Prior Agreement, and (iv) provide that the level of severance benefit under the Prior Agreement is not based on an executive's tenure with the Company (as so amended and restated, and as further amended on December 5, 2014, the "Agreement");

WHEREAS, the Agreement provides that the period of health care continuation coverage is 12 months following a qualifying Involuntary Termination, as compared to 18 months pursuant to the Prior Agreement;

WHEREAS, the parties intended that the period of health care continuation coverage provided for in the Agreement was to remain at 18 months as provided for in the Prior Agreement;

WHEREAS, the parties to the Agreement have agreed to amend the Agreement to align with the intention of such parties.

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration, receipt of which is hereby acknowledged, the Executive and the Company, intending to be legally bound, hereby agree as follows:

1. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.
2. Clause (i) of "Part Two—Section 3 (Continued Health Coverage)" of the Agreement is hereby amended so that the reference to "the twelve (12) month period" therein is replaced with a reference to "the eighteen (18) month period."

[Signature Page Follows]

IN WITNESS WHEREOF, the Company and the Executive have executed this Amendment on the day and year first above written.

EXECUTIVE

/s/ Daniel A. Gaudreau

Daniel A. Gaudreau

ACTUATE CORPORATION

By: /s/ Thomas E. McKeever

Name: Thomas E. McKeever

Title: Senior Vice President, General Counsel

[Signature Page to Amendment]