

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MELVIN LAX, Individually and on )
Behalf of All Others Similarly Situated, )
Plaintiff, )
v. )
ACTUATE CORPORATION, NICOLAS C. )
NIERENBERG, PETER I. CITTADINI, KENNETH )
E. MARSHALL, RAYMOND. L. OCAMPO )
JR., ARTHUR C. PATTERSON, STEVEN D. )
WHITEMAN, TIMOTHY B. YEATON, ASTEROID )
ACQUISITION CORP., and OPENTEXT )
CORPORATION, )
Defendants. )

C.A. No. 10467-VCP

NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT AND SETTLEMENT HEARING

TO: ALL PERSONS OR ENTITIES WHO HELD SHARES OF THE COMMON STOCK OF ACTUATE CORPORATION ("ACTUATE"), EITHER OF RECORD OR BENEFICIALLY, INCLUDING THEIR RESPECTIVE SUCCESSORS, HEIRS, OR ASSIGNS, IMMEDIATE AND REMOTE, AND ANY PERSON OR ENTITY ACTING FOR OR ON BEHALF OF, OR CLAIMING UNDER, ANY OF THEM, AND EACH OF THEM, AT ANY TIME BETWEEN AND INCLUDING DECEMBER 5, 2014 AND JANUARY 16, 2015 (THE "CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A LAWSUIT AND CONTAINS IMPORTANT INFORMATION. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR PURSUING THE "SETTLED CLAIMS" (DEFINED BELOW).

SPECIAL NOTICE TO BROKERS, BANKS, AND OTHER NOMINEES:

IF YOU WERE NOT THE BENEFICIAL HOLDER OF COMMON STOCK OF ACTUATE BUT HELD SUCH STOCK FOR A BENEFICIAL HOLDER, PLEASE TRANSMIT THIS DOCUMENT PROMPTLY TO SUCH BENEFICIAL HOLDER. ADDITIONAL COPIES FOR TRANSMITTAL TO BENEFICIAL HOLDERS ARE AVAILABLE BY REQUEST DIRECTED TO:

Actuate Corporation Shareholder Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

The purpose of this Notice is to inform you of a proposed settlement (the "Settlement") of the above-captioned consolidated action (the "Action") pending before the Delaware Court of Chancery (the "Court"), and of a hearing to be held before the Court, in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, on October 5, 2015, at 2:00 p.m. (the "Settlement Hearing"). The purpose of the Settlement Hearing is to: (a) determine whether the Settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of the Class; (b) determine whether the Court should enter an Order and Final Judgment dismissing the claims asserted in the Action on the merits and with prejudice as against Plaintiff and the Class and effectuating the releases described below; (c) determine whether certification of the Class should be made final and whether the Plaintiff and his counsel have adequately represented the Class; (d) determine whether the Court should grant the application of Andrews & Springer, LLC and Milberg, LLP ("Plaintiff's Counsel") for an award of attorneys' fees and reimbursement of litigation expenses; (e) consider any objections to the Settlement; and (f) rule on such other matters as may properly come before the Court.

The Court has determined that the Action shall be preliminarily maintained as a class action for purposes of the Settlement under Rule 23 of the Court of Chancery Rules, pursued by Melvin Lax, as representative of and on behalf of the members of the Class.

If you are a member of the Class, this Notice will inform you of how, if you so choose, you may enter your appearance in the Action or object to the Settlement and have your objection heard at the Settlement Hearing.

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THIS ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THIS ACTION.**

**Background and Description of the Action**

On December 5, 2014, Open Text Corporation (“OpenText”) and Actuate announced that they had entered into an Agreement and Plan of Merger (the “Merger Agreement”) by and among OpenText, its wholly-owned subsidiary, Asteroid Acquisition Corporation (“Asteroid”), and Actuate, pursuant to which Asteroid would commence a tender offer to purchase all of the issued and outstanding shares of Actuate common stock at a price of \$6.60 per share, net to the seller in cash, without interest and, if the tender offer were successful, Actuate would thereafter merge with and into Asteroid, with Asteroid continuing as the surviving corporation and a subsidiary of OpenText (the “Transaction”).

On December 16, 2014, Asteroid and OpenText jointly filed a Schedule TO in connection with the Transaction with the Securities and Exchange Commission (the “SEC”), and Actuate filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the “Schedule 14D-9”).

On December 17, 2014, a class action complaint was filed in the Delaware Court of Chancery (the “Court”), captioned *Lax v. Actuate, Inc., et al.*, C.A. No. 10467-VCP (the “Action”), asserting claims against the members of Actuate’s board of directors (the “Individual Defendants”), Actuate (together with the Individual Defendants, the “Actuate Defendants”), OpenText and Asteroid (together with OpenText, the “OpenText Defendants,” and collectively with the Actuate Defendants, the “Defendants”).

On December 18, 2014, Actuate filed Amendment No. 1 to the Schedule 14D-9 with the SEC.

On December 22, 2014, Actuate filed Amendment No. 2 to the Schedule 14D-9 with the SEC.

On December 29, 2014, Plaintiff in the Action filed an Amended Verified Class Action Complaint (the “Amended Complaint”) in the Action.

The Amended Complaint asserted claims that the Individual Defendants, aided and abetted by the OpenText Defendants, breached their fiduciary duties to Actuate stockholders in connection with the Transaction and that the Schedule 14D-9 failed to disclose certain material information to Actuate stockholders in connection with the Transaction.

On January 1, 2015, Actuate voluntarily produced documents to Plaintiff, including internal, non-public documents of Actuate and Actuate’s financial advisor, Morgan Stanley & Co. LLC.

On January 2, 2015, Actuate filed Amendment No. 3 to the Schedule 14D-9 with the SEC.

On January 3, 2015, Plaintiff submitted a settlement demand to Actuate.

Beginning on January 7, 2015, counsel to the parties in the Action began to negotiate the terms of a settlement of the Action, the basis of which was the inclusion of additional disclosures in an amendment to Actuate’s Schedule 14D-9.

On January 7, 2015, Plaintiff served Defendants with Plaintiff’s First Request for the Production of Documents to all Defendants. Later that day, Plaintiff filed his motion for a preliminary injunction to enjoin the stockholder vote.

On January 8, 2015 Plaintiff filed his Opening Brief in Support of the motion for preliminary injunction.

After arm’s-length negotiations, counsel to the parties in the Action reached an agreement-in-principle concerning the proposed settlement of the Action. Those extensive negotiations and discussions led to the execution of a memorandum of understanding (the “MOU”) on January 9, 2015. The MOU provided for an agreement in principle to settle the Action (the “Settlement”), subject to additional confirmatory discovery and approval of the court, on the basis of the inclusion of additional disclosures in Amendment No. 4 to the Schedule 14D-9, in the form attached hereto as Exhibit A, that was filed with the SEC on January 9, 2015 concerning subject areas raised by Plaintiff’s Counsel.

On January 9, 2015 the parties notified the Court of the execution of the MOU and provided a copy of the MOU and Exhibit A to the Court.

Following the execution of the MOU, and as contemplated therein, Plaintiff’s Counsel conducted a further investigation of the facts and circumstances underlying the claims asserted in the Action, which included, among other things, additional document discovery, and the depositions of Steven Whiteman, who was a Director of Actuate from April of 1998 until the Transaction was completed, and Erik Marth, Executive Director at Morgan Stanley & Co. LLC, Actuate’s financial advisor.

On the basis of information available to them, including publicly available information, discovery provided to them during expedited discovery, and the additional confirmatory discovery described herein, Plaintiff’s Counsel has

determined that the Settlement described herein is fair, reasonable, adequate, and in the best interests of Plaintiff and the Class (as defined herein).

On June 19, 2015, the Court entered a scheduling order providing for, among other things, the scheduling of the Settlement Hearing; a stay of the Actions pending a hearing on the Settlement; preliminary certification of the Class; and an injunction against the commencement or prosecution of any action by any member of the Class asserting any of the claims subject to the Settlement of the Actions.

### **Reasons for the Settlement**

Plaintiff and Plaintiff's Counsel in the Action have determined to enter into the Settlement which provided for the inclusion of disclosures in Amendment No. 4 to the Schedule 14D-9, in the form attached hereto as Exhibit A, that was filed with the SEC on January 9, 2015 concerning subject areas raised by Plaintiff's Counsel. On the basis of information available to them, Plaintiff's Counsel has determined that the Settlement described herein is fair, reasonable, adequate, and in the best interests of Plaintiff and the Class because it empowered the stockholders of Actuate to make a fully informed decision on whether to tender their shares. In evaluating and agreeing to the Settlement, Plaintiff and his counsel have considered: (i) the benefits to the members of the Class from consummation of the Transaction; (ii) the facts developed in the investigation by Plaintiff's Counsel and during discovery in the litigation, and the law applicable thereto; (iii) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; and (iv) the desirability of permitting the Settlement to be consummated according to its terms.

The Individual Defendants, together with Actuate, Asteroid and OpenText, each have denied, and continue to deny, that they have committed or aided and abetted the commission of any violation of law or engaged in any of the wrongful acts alleged in the Action, and expressly maintain that they diligently and scrupulously complied with any fiduciary duties or other legal duties they may have had, and/or did not aid or abet the breach of any such duty. They are entering into this Settlement solely to eliminate the burden, expense, and uncertainties inherent in further litigation.

The parties wish to settle and resolve the claims asserted by Plaintiff and all claims relating to or arising out of the Transaction, and the parties have, following arm's-length negotiations, reached an agreement as set forth in the Stipulation, providing for the settlement of the Action on the terms and subject to the conditions set forth in the Stipulation, and the parties believe the Settlement is in the best interests of the parties and Actuate public stockholders.

### **Settlement Terms**

In consideration for the Settlement and dismissal with prejudice of the Action and releases described herein, Defendants agreed to provide, and did provide, additional disclosures in Amendment No. 4 to the Schedule 14D-9 concerning the Transaction, including the events leading up to the execution of the Merger Agreement, and the valuation analysis conducted by Actuate's financial advisor, which was filed with the SEC on January 9, 2015, and is attached hereto as Exhibit A and is available at <http://www.sec.gov/Archives/edgar/data/1062478/000119312515005786/d849169dsc14d9a.htm> and at the Notice Administrator website: [www.actuateshareholderlitigation.com](http://www.actuateshareholderlitigation.com). Defendants acknowledge that Plaintiff's Counsel's comments were incorporated in substantial part in the supplemental disclosures reflected in Exhibit A.

In connection with settlement discussions and negotiations leading to the Settlement, counsel for the parties in the Action did not discuss the appropriateness or amount of any application by counsel for the Plaintiff for an award of attorneys' fees and expenses until after the substantive terms of the settlement on behalf of and for the benefit of the Class were negotiated at arm's-length and agreed upon.

### **The Settlement Hearing**

The Settlement Hearing shall be held on October 5, 2015, at 2:00 p.m., in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801 to: (a) determine whether the Settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of the Class; (b) determine whether the Court should enter an Order and Final Judgment dismissing the claims asserted in the Action on the merits and with prejudice as against Plaintiff and the Class and effectuating the releases described below; (c) determine whether the provisional certification of the Class provided for in the Scheduling Order should be made final and whether the Plaintiff and his counsel have adequately represented the Class; (d) determine whether the Court should grant the application of Plaintiff's Counsel for an award of attorneys' fees and reimbursement of litigation expenses; (e) consider any objections to the Settlement or fee application; and (f) rule on such other matters as may properly come before the Court.

The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys' fees, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.

The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties to the Stipulation and without further notice to the Class.

### **Right To Appear and Object**

Any member of the Class who objects to the Settlement, the Final Judgment to be entered in the Action, and/or Plaintiff's Counsel's application for attorneys' fees and expenses, or who otherwise wishes to be heard, may appear in person or by such member's attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than September 21, 2015 such person files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear; (b) a statement of such person's objections to any matters before the Court; and (c) the grounds for such objections, the reasons that such person desires to appear and be heard, and documentation evidencing membership in the Class as well as all documents or writings such person desires the Court to consider. Such filings shall be served upon the following counsel:

Peter B. Andrews  
Craig J. Springer  
ANDREWS & SPRINGER, LLC  
3801 Kennett Pike  
Building C, Suite 305  
Wilmington, DE 19807  
*Counsel for Plaintiff Melvin Lax*

Tamika Montgomery-Reeves  
WILSON SONSINI GOODRICH & ROSATI P.C.  
222 Delaware Avenue, Suite 800  
Wilmington, Delaware 19801  
*Counsel for Defendants Actuate Corporation, Nicolas C. Nierenberg, Peter I. Cittadini, Kenneth E. Marshall, Raymond L. Ocampo Jr., Arthur C. Patterson, Steven D. Whiteman, and Timothy B. Yeaton*

Matthew E. Fischer  
POTTER ANDERSON & CORROON LLP  
1313 N. Market St., Sixth Floor  
P.O. Box 951  
Wilmington, DE  
*Counsel for Defendants OpenText Corporation and Asteroid Acquisition Corporation*

and must also be contemporaneously filed with the Register in Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801.

Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement, any judgment entered thereon, the adequacy of the representation of the Class by Plaintiff and Plaintiff's Counsel, any award of attorneys' fees/expenses, or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as described herein. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding.

Any member of the Class who does not object to the Settlement or the request by Plaintiff's Counsel for an award of attorneys' fees and expenses (described below) or to any other matter stated above need not do anything.

### **Interim Injunction**

Pending final determination of whether the Settlement should be approved, Plaintiff and all members of the Class are barred and enjoined from commencing or prosecuting any action asserting any Settled Claims, either directly, representatively, derivatively, or in any other capacity, against Defendants or any of the Released Persons.

### **The Order and Final Judgment**

If the Court determines that the Settlement, as provided for in the Stipulation, is fair, reasonable, adequate and in the best interests of the Class, the parties to the Action will ask the Court to enter the Order and Final Judgment, which will, among other things:

- (a) approve the Settlement as fair, reasonable, adequate and in the best interests of the Class and direct consummation of the Settlement in accordance with its terms and conditions;
- (b) confirm final certification of the Action as a class action pursuant to Court of Chancery Rules 23(a) and (b)(1, 2) on behalf of the Class;
- (c) determine that the requirements of the rules of the Court and due process have been satisfied in connection with this Notice;
- (d) dismiss the Action with prejudice on the merits and grant the releases more fully described below in accordance with the terms and conditions of the Stipulation;
- (e) permanently bar and enjoin Plaintiff and all members of the Class from instituting, commencing or prosecuting any of the Settled Claims against any of the Released Persons (as defined below); and
- (f) award attorneys' fees and expenses to Plaintiff's Counsel.

## Releases

The Stipulation provides that the Court's Order and Final Judgment shall also provide for the full and complete dismissal of the Action with prejudice, and the settlement and release of, and a permanent injunction barring, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters, and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been or could have been, asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside of the United States and including claims brought in the capacity as Actuate stockholders under the Securities Act of 1933, the Securities Exchange Act of 1934 and any other provisions of the federal securities laws and any rule or regulation promulgated pursuant thereto, and any state disclosure law), by or on behalf of Plaintiff or any member of the Class, whether individual, direct, class, derivative, representative, legal, equitable, or any other type or in any other capacity (collectively, the "Releasing Persons") against Defendants or any of their families, parent entities, controlling persons, associates, affiliates, or subsidiaries and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, insurers, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, or assigns (including, without limitation, any person or entity acting for or on behalf of any of them and each of them) (the "Released Persons") which the Releasing Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the acts, events, facts, matters, transactions, occurrences, statements, or representations, or any other matter whatsoever set forth in or otherwise related, directly or indirectly, to (i) the allegations and claims in the Action, (ii) the complaints, (iii) the Transaction, (iv) the Schedule TO, the Schedule 14D-9, or any amendments and/or supplements thereto, (v) the events leading to the execution of the Merger Agreement, including the negotiations of the Merger Agreement, (vi) any agreements relating to the Merger Agreement, and any compensation or other payments made to any of Defendants in connection with the Transaction, (vii) any transactions contemplated by the Merger Agreement, (viii) disclosures made in connection with the Merger Agreement (including the adequacy and completeness of such disclosures), (ix) the consideration received or to be received by Plaintiff or any member of the Class in connection with the Transaction, (x) any alleged aiding and abetting of any of the foregoing claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses and matters, and (xi) any and all conduct by any of the Defendants or any of the other Released Persons arising out of or relating in any way to the negotiation or execution of the MOU or the Stipulation (collectively, the "Settled Claims"); provided, however, that the Settled Claims shall not include any claims for appraisal pursuant to Section 262 of the General Corporation Law of the State of Delaware, or any claims to enforce the Settlement and the Stipulation.

The Stipulation also provides that the Order and Final Judgment shall provide for the full and complete release and bar of any and all claims, sanctions, penalties or complaints of any nature, whether known or unknown, existing or not yet existing, matured or unmatured, by any Defendant or Released Person, as well as their successors and assigns, as against Plaintiff, other Class members, or Plaintiff's Counsel, in connection with the initiation, prosecution, resolution of the Action, or any of the claims asserted in the Action (the "Settled Defendants' Claims"); provided, however, that the Defendants and Released Persons shall retain the right to enforce in court the terms of the Settlement and the Stipulation.

The release extends to any Settled Claim that Plaintiff or any member of the Class does not know or suspect to exist in his, her, or its favor at the time of the release of the Settled Claims as against the Released Persons, and any Settled Defendants' Claim that Defendants or any Released Person does not know or suspect exists in his, her, or its favor at the time of the release of the Settled Defendants' Claims as against Plaintiff, other Class Members, or Plaintiff's Counsel, including without limitation those which, if known, might have affected the decision to enter into the Settlement or to object or not to object to the Settlement ("Unknown Claims"). Plaintiff acknowledges, and the members of the Class by operation of law shall be deemed to have acknowledged, that "Unknown Claims" are expressly included in the definition of "Settled Claims," and that such inclusion was expressly bargained for and was a key element of the Settlement and was relied upon by each and all of the Released Persons in entering into the Settlement.

With respect to any of the Settled Claims and the Settled Defendants' Claims, the Releasing Persons and the Defendants and other Released Persons expressly waive and relinquish to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the releases set forth above.

This includes a waiver by the Releasing Persons and the Defendants and other Released Persons, to the fullest extent permitted by law, of any and all provisions, rights, and benefits conferred by or under Section 1542 of the California Civil Code (or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542), which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**

Plaintiff and Defendants acknowledge, and the members of the Class and Released Persons shall be deemed by operation of the entry of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for, is an integral element of the Settlement, and was relied upon by each and all of the Parties in entering into the Settlement.

Plaintiff and Defendants acknowledge, and the members of the Class and the Released Persons by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true by them with respect to the Settled Claims or the Settled Defendants' Claims, but that it is the intention of Plaintiff and Defendants, and by operation of law the intention of the members of the Class and the Released Persons, to completely, fully, finally and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Settled Claims and Settled Defendants' Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

**Application for Attorneys' Fees and Expenses**

After negotiating and agreeing on the substantive terms of the Settlement described above, the Parties negotiated the amount of attorneys' fees and expenses that would be paid to Plaintiff's Counsel.

Plaintiff's Counsel intend to petition for an award of fees and reimbursement of expenses not to exceed \$265,000. Defendants have agreed to an award of fees and expenses to Plaintiff's Counsel of up to \$265,000 or such lower amount as approved by the Court, and will not oppose a petition for fees and expenses up to that amount.

Except as specifically provided for in the Stipulation, Defendants shall bear no expenses, costs, damages, or fees alleged or incurred by Plaintiff, by any member of the Class, or by any of their attorneys, experts, advisors, agents, or representatives.

**Notice to Persons or Entities That Held Ownership on Behalf of Others**

Brokerage firms, banks and/or other persons or entities who held shares of the common stock of Actuate during the period from and including December 5, 2014, through and including January 16, 2015, for the benefit of others are requested to promptly send this Notice to all of their respective beneficial owners. If additional copies of the Notice are needed for forwarding to such beneficial owners, any requests for such copies may be made to:

*Actuate Corporation Shareholder Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040  
1-844-768-1721  
www.actuateshareholderlitigation.com

**Scope of this Notice and Additional Information**

The foregoing description of the Settlement Hearing, the Action, the terms of the Settlement and other matters described herein do not purport to be comprehensive. Accordingly, members of the Class are referred to the documents filed with the Court in the Action. Inquiries or comments about the Settlement may be directed to the attention of Plaintiff's Counsel:

Kent A. Bronson  
Todd Kammerman  
MILBERG LLP  
One Pennsylvania Plaza  
New York, New York 10119  
Tel: 212-594-5300

**PLEASE DO NOT WRITE OR CALL THE COURT.**

Dated: July 18, 2015

BY ORDER OF THE COURT OF CHANCERY OF  
THE STATE OF DELAWARE

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Register in Chancery



# EXHIBIT A

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

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**SCHEDULE 14D-9**

**Solicitation/Recommendation Statement  
Under Section 14(d)(4) of the Securities Exchange Act of 1934  
(Amendment No. 4)**

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**ACTUATE CORPORATION**  
(Name of Subject Company)

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**ACTUATE CORPORATION**  
(Name of Person Filing Statement)

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**Common Stock, par value \$0.001 per share**  
(Title of Class of Securities)

**00508B102**  
(CUSIP Number of Class of Securities)

**Peter I. Cittadini**  
**President and Chief Executive Officer**  
**Actuate Corporation**  
**951 Mariners Island Boulevard, Suite 700**  
**San Mateo, California 94404**  
**(650) 645-3000**

(Name, address and telephone number of person authorized to receive notices and communications  
on behalf of the person filing statement)

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*With a copy to:*

**Douglas Cogen**  
**Fenwick & West LLP**  
**555 California Street, 12th Floor**  
**San Francisco, CA 94104**  
**(415) 875-2300**

**Thomas E. McKeever**  
**Senior Vice President, General Counsel, Corporate**  
**Development, Chief Compliance Officer and Secretary**  
**Actuate Corporation**  
**951 Mariners Island Boulevard**  
**San Mateo, California 94404**  
**(650) 645-3000**

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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This Amendment No. 4 (this “**Amendment**”) amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 of Actuate Corporation, a Delaware corporation (the “**Company**”), initially filed on December 16, 2014, and amended on December 18, 2014, December 22, 2014 and January 2, 2015 (as amended, the “**Initial Schedule 14D-9**”). The Initial Schedule 14D-9 and this Amendment relate to the tender offer by Asteroid Acquisition Corporation, a Delaware corporation (“**Purchaser**”) and a wholly-owned subsidiary of Open Text Corporation, a Canadian corporation (“**Parent**” or “**OpenText**”), to purchase all Shares (as defined in the Initial Schedule 14D-9 in Item 1 under the heading “Class of Securities”) that are issued and outstanding, at a price of \$6.60 per Share net to the seller in cash (the “**Offer Price**”), without interest thereon and subject to any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 16, 2014 (as it may be amended or supplemented from time to time, the “**Offer to Purchase**”), and the related Letter of Transmittal (as it may be amended or supplemented from time to time, the “**Letter of Transmittal**” and, together with the Offer to Purchase, the “**Offer**”), which were filed with the Initial Schedule 14D-9 and are incorporated by reference as Exhibits (a)(1)(i) and (a)(1)(ii) thereto, and are incorporated by reference herein. Except as otherwise set forth below, the information set forth in the Initial Schedule 14D-9 remains unchanged and is incorporated by reference as relevant to the items in this Amendment. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Initial Schedule 14D-9.

### **Item 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS**

1. The section captioned “Agreements or Arrangements with Executive Officers and Directors of the Company” under Item 3 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating the first paragraph thereof in its entirety as follows:

Certain of the Company’s executive officers and directors have financial interests in the Transactions that are different from, or in addition to, the interests of the Company’s stockholders generally. Following consummation of the Transaction, no member of the Board will have a position with OpenText, other than Mr. Cittadini in his capacity as an at-will employee of the Company. The Board was aware of these potentially differing interests and considered them, among other matters, in evaluating and negotiating the Merger Agreement and in reaching its decision to approve the Merger Agreement and the Transactions.

### **Item 4. THE SOLICITATION OR RECOMMENDATION**

1. The section captioned “Background and Reasons for the Recommendation—Background of the Offer” under Item 4 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating the sixteenth paragraph thereof in its entirety as follows:

On October 29, 2014, the Board held a meeting. The Board reviewed the recent contacts with OpenText and OpenText’s October 20 proposal. The Board discussed with the Company’s management the Company’s business prospects on a stand-alone basis. The Board determined that OpenText’s proposal of \$6.16 per Share represented insufficient value and instructed the Company’s management to convey this to OpenText.

2. The section captioned “Background and Reasons for the Recommendation—Background of the Offer” under Item 4 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating the twenty-first and twenty-second paragraphs thereof, respectively, in their entirety as follows:

On November 2, 2014, representatives of Morgan Stanley contacted a corporate development executive of Strategic Party A (which was the company that had made the non-binding preliminary indication of interest in 2013) regarding its potential interest in an acquisition of the Company. Strategic Party A informed Morgan Stanley that it was not interested in pursuing a potential acquisition transaction at such time and that it did not require any additional information regarding the Company. Strategic Party A did not enter into a confidentiality agreement or standstill agreement with the Company.

On November 2, 2014, representatives of Morgan Stanley contacted a corporate development executive of each of Strategic Party B and Strategic Party C regarding its potential interest in an acquisition of the Company. The corporate development executive of Strategic Party C responded on November 3, 2014 to arrange a time to discuss a potential transaction with representatives of Morgan Stanley by telephone on November 4, 2014. Neither Strategic Party B nor Strategic Party C entered into a confidentiality agreement or standstill agreement with the Company.

3. The section captioned “Opinion of Morgan Stanley, the Company’s Financial Advisor—Summary of Financial Analyses—Equity Research Price Target Analysis” under Item 4 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating the first paragraph thereof in its entirety as follows:

Morgan Stanley reviewed and analyzed future public market trading price targets for Shares prepared and published by equity research analysts prior to December 4, 2014 (the last full trading day prior to the announcement of the execution of the Merger Agreement). As part of this analysis, Morgan Stanley reviewed reports of four different equity research analysts, two of whom provided one-year forward price targets for Shares. All of these reports were dated November 2014. These one-year forward targets reflected each analyst’s estimate of the future public market trading price of Shares. The range of undiscounted analyst price targets was \$4.75 to \$7.00 per Share as of December 4, 2014, and Morgan Stanley noted that the median undiscounted analyst price target was \$5.88 per Share. Morgan Stanley also discounted these price targets to present values using a discount rate of 11.4%, which rate was selected based on the Company’s estimated cost of equity, which resulted in discounted analyst price targets ranging from \$4.26 to \$6.28 per Share as of December 4, 2014.

4. The section captioned “Opinion of Morgan Stanley, the Company’s Financial Advisor—Summary of Financial Analyses—Public Trading Comparables Analysis” under Item 4 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating such section in its entirety as follows:

#### *Public Trading Comparables Analysis*

Morgan Stanley performed a public trading comparables analysis, which attempts to provide an implied value of a company by comparing it to similar companies that are publicly traded. To perform this analysis, Morgan Stanley selected various companies that Morgan Stanley believed shared similar business characteristics as the Company, and grouped these companies into two areas: companies that provide software as a service (“**SaaS**”) and midcap enterprise software companies (“**MesC**”). Morgan Stanley then looked at a variety of other factors that shared comparable operating characteristics as the Company. Among the characteristics that Morgan Stanley reviewed to determine comparability were the Company’s revenues, growth rates, market capitalizations, profitability, scale, prospects, and other factors that Morgan Stanley, in its discretion, believed were appropriate (collectively, the “**comparable companies**”). Morgan Stanley then reviewed and compared certain financial estimates for the Company with the comparable publicly available consensus equity analyst research estimates for the comparable companies to provide the implied values. The comparable companies were the following:

#### Software-as-a-Service Companies

- Blackbaud, Inc.
- Jive Software, Inc.
- MicroStrategy Incorporated
- RealPage, Inc.
- ServiceSource International, Inc.

#### Selected Midcap Enterprise Software Companies

- Callidus Software Inc.
- Manhattan Associates, Inc.
- Progress Software Corporation
- Sage Group plc

For purposes of this analysis, Morgan Stanley analyzed the ratio of aggregate value, which Morgan Stanley defined as fully diluted market capitalization plus total debt less cash and cash equivalents, to revenue estimates prepared and published by equity research analysts for calendar years 2014 and 2015, of each of the comparable companies for comparison purposes.

Based on its analysis of the relevant metrics for each of the comparable companies, including the growth rate of the Company relative to the growth rate of the comparable companies, Morgan Stanley selected representative ranges of revenue multiples and applied these ranges of multiples to the estimated revenue for the Company. For purposes of this analysis and other analyses described below, Morgan Stanley utilized a set of revenue estimates prepared by the Company's management over the same time period (the "**Management Case**"), which is more fully described in this Item 4 under the heading "Certain Unaudited Prospective Financial Information of the Company."

Based upon this analysis, the median revenue multiple for the SaaS companies for 2014 was 2.7x and for 2015 was 2.6x, while the median revenue multiple for the MesC companies for 2014 was 5.1x and for 2015 was 4.5x, and Morgan Stanley noted that the revenue multiples for these companies was highly correlated to the company's growth rates. Given the Company's growth projections, based on the number of outstanding Shares on a fully diluted basis (including outstanding options and restricted stock units) as of December 4, 2014, Morgan Stanley calculated the estimated implied value per Share as of December 4, 2014 as follows:

<b>Calendar Year Financial Statistic</b>	<b>Comparable Company Multiple Range</b>	<b>Implied Value Per Share</b>
<b>Management Case</b>		
Aggregate Value to Estimated 2014 Revenue	1.0x – 3.0x	\$3.28 – \$7.14
Aggregate Value to Estimated 2015 Revenue	1.0x – 2.5x	\$3.11 – \$5.87

No company utilized in the public trading comparables analysis is identical to the Company. Morgan Stanley selected the companies to be included in the comparable companies analysis because, among other reasons, in its professional judgment, these companies were the most appropriate to include as part of its analysis and because the relevant information was available for these companies. As part of this process, Morgan Stanley determined that certain SaaS and/or MesC companies were not comparable to the Company. In evaluating the comparable companies, as well as which companies were or were not comparable, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the Company's and Morgan Stanley's control, such as the impact of competition on the Company's businesses and the industry generally, industry growth and the absence of any adverse material change in the Company's financial condition and prospects of the Company or the industry, or in the financial markets in general. Mathematical analysis (such as determining the average or median) is not in itself a meaningful method of using comparable company data.

5. The section captioned "Opinion of Morgan Stanley, the Company's Financial Advisor—Summary of Financial Analyses—Discounted Equity Value Analysis" under Item 4 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating the first paragraph thereof in its entirety as follows:

Morgan Stanley performed a discounted equity value analysis, which is designed to provide insight into the potential future equity value of a company as a function of the company's estimated future earnings. The resulting equity value is subsequently discounted to arrive at an estimate of the implied present value for such company's potential future equity value. In connection with this analysis, Morgan Stanley calculated a range of implied present equity values per Share on a standalone basis. To calculate the discounted equity value, Morgan Stanley used calendar year 2016 revenue estimates from the Management Case. Morgan Stanley used calendar year 2016 revenue estimates because Morgan Stanley determined that this was the most relevant estimate for a Discounted Equity Value Analysis based on, among other things, the on-going and anticipated future modifications to the Company's business model. Morgan Stanley then applied a range of aggregate value to revenue multiples derived from its comparable company analysis to these estimates and applied a discount rate of 11.4%. Morgan Stanley applied a discount rate of 11.4% based upon the Company's estimated cost of equity.

6. The section captioned "Certain Unaudited Prospective Financial Information of the Company" under Item 4 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating the first sentence thereof in its entirety as follows:

The Company's management provided to Morgan Stanley in late September 2014 certain unaudited prospective financial information as of September 2014 for fiscal years 2014 through 2018 (the "**September Projections**"), based principally (but not exclusively) on which Morgan Stanley prepared a preliminary financial analysis of a potential strategic transaction, which was reviewed by the Board at its meeting on November 6, 2014.

**Item 8. ADDITIONAL INFORMATION**

1. The section captioned “Litigation” under Item 8 of the Initial Schedule 14D-9 is hereby amended and supplemented by amending and restating such section in its entirety as follows:

The following complaint has been filed in connection with the Offer and the Merger (the “**Proposed Transaction**”): a complaint in the Court of Chancery of the State of Delaware, dated December 17, 2014, captioned *Lax v. Actuate Corporation, et al.* (the “**complaint**”). On December 29, 2014, plaintiff in that case filed an amended complaint in the same court under the same caption (the “**amended complaint**”) (the amended complaint, together with the complaint, the “**Action**”). The Action is a purported stockholder class action and names as defendants the Company, the members of the Board, OpenText, and Purchaser (collectively, the “**Defendants**”).

The amended complaint alleges that the members of the Board breached their fiduciary duties to the Company’s stockholders in connection with the Proposed Transaction. In support of these purported claims, the amended complaint alleges that the members of the Board (i) failed to adequately consider the Proposed Transaction, including whether it maximizes stockholder value, (ii) failed to apprise themselves of the true value of the Company and (iii) otherwise failed to take steps necessary to comply with their fiduciary duties, such as by avoiding conflicts of interest and disclosing all material facts necessary to permit the Company’s public stockholders to make an informed decision with respect to the Proposed Transaction or any alternate transaction. The amended complaint also claims that OpenText and Purchaser aided and abetted the purported breaches of fiduciary duties. The plaintiff seeks additional disclosure with respect to (i) the process undertaken by the Board in connection with a potential transaction and (ii) the financial analysis and methods relied upon by the Board in its valuation of the Company. The plaintiff also seeks, among other things, to obtain damages and to enjoin the Proposed Transaction and attorneys’ and expert fees and costs. The Defendants may become subject to similar litigation relating to the Proposed Transaction.

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**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: January 9, 2015

**ACTUATE CORPORATION**

By: /s/ Peter I. Cittadini

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Peter I. Cittadini  
President and Chief Executive Officer