

XOMA LTD /DE/  
Form S-3/A  
June 03, 2011

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As filed with the Securities and Exchange Commission on June 3, 2011

Registration No. 333-172197

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

AMENDMENT NO. 2  
to  
FORM S-3  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

XOMA Ltd.  
(Exact name of registrant as specified in its charter)

Bermuda  
(State or other jurisdiction of  
incorporation or organization)

52-2154066  
(I.R.S. Employer  
Identification No.)

2910 Seventh Street  
Berkeley, California 94710  
(510) 204-7200  
(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

Christopher J. Margolin, Esq.  
XOMA Ltd.  
2910 Seventh Street  
Berkeley, California 94710  
(510) 204-7200  
(Name, address, including zip code, and telephone number, including  
area code, of agent for service)

Copy to:

Geoffrey E. Liebmann, Esq.  
Cahill Gordon & Reindel LLP  
80 Pine Street  
New York, New York 10005  
(212) 701-3000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

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If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a Smaller reporting company   
smaller reporting company)

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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#### EXPLANATORY NOTE

This amendment is being filed to update the list of documents previously filed with the Securities and Exchange Commission and “incorporated by reference” into this registration statement that appears under the heading “WHERE YOU CAN FIND MORE INFORMATION” below.

This registration statement contains two prospectuses. One of these prospectuses, which we refer to as the base prospectus, covers the offering, issuance and sale from time to time, in one or more series or classes of the following securities:

- our common shares;
- our preference shares;
- our debt securities, which may be senior or subordinated; and
- warrants for the purchase of our common shares, preference shares and/or debt securities.

The specific terms of any securities to be offered pursuant to the base prospectus will be specified in a prospectus supplement.

A second prospectus, which we refer to as the MLV sales agreement prospectus, covers our common shares that we may offer, issue and sell under the At Market Issuance Sales Agreement entered into between us and McNicoll, Lewis & Vlak LLC on February 4, 2011. The MLV sales agreement prospectus will be identical to the base prospectus in all respects, except that the MLV sales agreement prospectus will contain a different cover page, plan of distribution section and legal matters section. The cover page, plan of distribution section and legal matters section to be contained in the MLV sales agreement prospectus are set forth following the base prospectus included herein.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, Dated June 3, 2011

\$100,000,000

Common Shares  
Preference Shares  
Debt Securities  
Warrants

offered by  
XOMA Ltd.

From time to time, we may offer up to \$100,000,000 of any combination of the securities described in this prospectus.

We will provide specific terms of these offerings and securities in supplements to this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus, the information incorporated by reference in this prospectus and any prospectus supplement carefully before you invest.

Our common shares are traded on The NASDAQ Global Market under the symbol "XOMA." On June 2, 2011, the last reported sale price of our common shares was \$3.02 per share. You are urged to obtain current market quotations for our common shares. The applicable prospectus supplement will contain information, where applicable, as to any other listing on The NASDAQ Global Market or any securities market or other exchange of the securities, if any, covered by the prospectus supplement.

Investing in our securities involves a high degree of risk. See the section entitled "RISK FACTORS" contained in any supplements to this Prospectus and in our most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q, as well as any amendments thereto, as filed with the Securities and Exchange Commission, and which are incorporated herein by reference in their entirety.

This Prospectus may not be used to offer or sell any securities unless accompanied by a Prospectus Supplement.

The securities may be sold directly by us to investors, through agents designated from time to time or to or through underwriters or dealers. For additional information on the methods of sale, you should refer to the section entitled "PLAN OF DISTRIBUTION" in this prospectus. If any underwriters are involved in the sale of any securities with respect to which this prospectus is being delivered, the names of such underwriters and any applicable commissions or discounts and over-allotment options will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Consent under the Exchange Control Act 1972 (and its related regulations) has been obtained from the Bermuda Monetary Authority for the issue and transfer of XOMA's shares, options, warrants, depositary receipts, rights, loan notes and other securities to and between non-residents of Bermuda for exchange control purposes provided our shares remain listed on an appointed stock exchange, which includes The NASDAQ Global Market. This prospectus may be filed with the Registrar of Companies in Bermuda in accordance with Bermuda law. In granting such consent and in accepting this prospectus for filing, neither the Bermuda Monetary Authority nor the Registrar of Companies in Bermuda accepts any responsibility for our financial soundness or the correctness of any of the statements made or opinions expressed in this prospectus.

The date of this prospectus is \_\_\_\_\_, 2011

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. Under this shelf registration process, we may sell common shares, preference shares, debt securities and warrants in one or more offerings up to a total dollar amount of \$100,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell any securities under this prospectus, we may provide a prospectus supplement that will contain more specific information about the terms of those securities. We may also add, update or change in a prospectus supplement any of the information contained in this prospectus or in documents we have incorporated by reference into this prospectus. This prospectus, together with the applicable prospectus supplements and the documents incorporated by reference into this prospectus, includes all material information relating to this offering. You should carefully read both this prospectus and the applicable prospectus supplement together with the additional information described under “WHERE YOU CAN FIND MORE INFORMATION” before buying securities in this offering. You should rely only on the information we have provided or incorporated by reference in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information in this prospectus or any prospectus supplement is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any sale of a security.

## ABOUT XOMA

XOMA Ltd., a Bermuda company (“XOMA” or “we”), is a leader in the discovery and development of therapeutic antibodies. XOMA discovers, develops and manufactures novel antibody therapeutics for its own proprietary pipeline as well as through license and collaborative agreements with pharmaceutical and biotechnology companies, and under its contracts with the U.S. government. XOMA’s proprietary product pipeline includes:

- XOMA 052, a potent anti-IL-1 beta antibody which XOMA plans to enter into Phase 3 clinical development in Behcet’s uveitis, for which it has been designated an orphan drug. XOMA is developing XOMA 052 in collaboration with Les Laboratoires Servier.
  - XOMA 3AB, a novel combination of three antibodies to prevent and treat botulism poisoning caused by exposure to botulinum neurotoxin Type A, among the most deadly potential bioterror threats, which is in a Phase 1 clinical trial sponsored by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health.
- A preclinical pipeline with candidates in development for autoimmune, cardio-metabolic, inflammatory and oncologic diseases.

XOMA has a premier antibody discovery and development platform that incorporates an unmatched collection of antibody phage display libraries and proprietary Human Engineering™, affinity maturation, Bacterial Cell Expression (BCE) and manufacturing technologies. BCE is a key breakthrough biotechnology for the discovery and manufacturing of antibodies and other proteins. As a result, more than 50 pharmaceutical and biotechnology companies have signed BCE licenses, and several licensed product candidates are in clinical development.

XOMA has a fully integrated product development infrastructure, extending from pre-clinical science to product approval at its Berkeley, California location.

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## RISK FACTORS

Except for the historical information contained in this prospectus or incorporated by reference, this prospectus (and the information incorporated by reference in this prospectus) contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed here or incorporated by reference. Factors that could cause or contribute to such differences include those discussed in the section entitled “RISK FACTORS” contained in any supplements to this prospectus and in our most recent annual report on Form 10-K and quarterly reports on Form 10-Q filed with the SEC, as well as any amendments thereto reflected in subsequent filings with the SEC, which are incorporated herein by reference in their entirety.

Investment in our securities involves risks. Prior to making a decision about investing in our securities, you should consider carefully the risk factors, together with all of the other information contained or incorporated by reference in this prospectus and any prospectus supplement, including any additional specific risks described in any prospectus supplement. Each of these risk factors could adversely affect our business, operating results and financial condition, which may result in the loss of all or part of your investment.

Keep these risk factors in mind when you read forward-looking statements contained elsewhere or incorporated by reference in this prospectus and any prospectus supplement. These statements relate to our expectations about future events. Discussions containing forward-looking statements may be found, among other places, in “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” incorporated by reference from our annual reports on Form 10-K and our quarterly reports on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. These forward-looking statements are based largely on our expectations and projections about future events and future trends affecting our business, and so are subject to risks and uncertainties, including the risks and uncertainties described below under “FORWARD-LOOKING INFORMATION,” that could cause actual results to differ materially from those anticipated in the forward-looking statements.

## THE SECURITIES WE MAY OFFER

We may offer our common shares and preference shares, various series of debt securities and/or warrants to purchase any of such securities, with a total value of up to \$100,000,000, from time to time under this prospectus at prices and on terms to be determined by market conditions at the time of offering. This prospectus provides you with a general description of the securities we may offer. Each time we offer a type or series of securities, we may provide a prospectus supplement that will describe the specific amounts, prices and other important terms of the securities, including, to the extent applicable:

- designation or classification;
- aggregate principal amount or aggregate offering price;
  - maturity, if applicable;
- rates and times of payment of interest or dividends, if any;
- redemption, conversion or sinking fund terms, if any;
  - voting or other rights, if any;
  - conversion prices, if any; and

- important federal income tax considerations.

The prospectus supplement also may add, update or change information contained in this prospectus or in documents we have incorporated by reference. However, no prospectus supplement shall offer a security that is not registered and described in this prospectus at the time of its effectiveness.

We may sell the securities directly to or through agents, underwriters or dealers. We, and our agents or underwriters, reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities through agents or underwriters, we may include in the applicable prospectus supplement:

- the names of those agents or underwriters;
- applicable fees, discounts and commissions to be paid to them;
- details regarding over-allotment options, if any; and
- the net proceeds to us.

Common Shares. We may issue common shares from time to time. Holders of common shares are entitled to one vote per share on all matters submitted to a vote of shareholders. Subject to the rights of any series of preference shares issued from time to time, all actions submitted to a vote of shareholders shall be voted on by the holders of common shares, voting together as a single class (together with the Series A Preference Shares (as described below), if any), except as provided by law.

Preference Shares. We may issue preference shares from time to time, in one or more series. Our board of directors shall determine the rights, preferences, privileges and restrictions of the preference shares, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of any series. Convertible preference shares will be convertible into our common shares or convertible into or exchangeable for our other securities. Conversion may be mandatory or at your option and would be at prescribed conversion rates.

If we sell any series of preference shares under this prospectus and applicable prospectus supplements, we will fix the rights, preferences, privileges, qualifications and restrictions of the preference shares of such series in the resolutions creating that series. We will incorporate by reference into the registration statement of which this prospectus is a part the form of any resolutions that set out the terms of the series of preference shares we are offering before the issuance of such series of preference shares. We urge you to read the prospectus supplements related to the series of preference shares being offered, as well as the complete resolutions that set out the terms of such series of preference shares.

Debt Securities. We may offer debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. The senior debt securities will rank equally with any other unsecured and unsubordinated debt. The subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner described in the instrument governing the debt, to all of our senior indebtedness. Convertible debt securities will be convertible into or exchangeable for our common shares or our other securities. Conversion may be mandatory or at your option and would be at prescribed conversion rates.

The debt securities will be issued under one or more documents called indentures, which are contracts between us and a to be named national banking association or other eligible party, as trustee. In this prospectus, we have summarized certain general features of the debt securities. We urge you, however, to read the prospectus supplements related to the series of debt securities being offered, as well as the complete indentures that contain the terms of the debt securities. Forms of indentures have been filed as exhibits to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports we file with the SEC.

Warrants. We may issue warrants for the purchase of common shares, preference shares and/or debt securities in one or more series. We may issue warrants independently or together with common shares, preference shares and/or debt securities, and the warrants may be attached to or separate from these securities.

The warrants will be evidenced by warrant certificates issued under one or more warrant agreements, which are contracts between us and an agent for the holders of the warrants. In this prospectus, we have summarized certain general features of the warrants. We will incorporate by reference into the registration statement of which this prospectus is a part the form of warrant agreement, including a form of warrant certificate, that describes the terms of the series of warrants we are offering before the issuance of the related series of warrants. We urge you to read the prospectus supplements related to the series of warrants being offered, as well as the complete warrant agreements and warrant certificates that contain the terms of the applicable series of warrants.

## FORWARD-LOOKING INFORMATION

Certain statements contained in this prospectus and the related documents incorporated by reference related to the sufficiency of our cash resources, the timing of availability of clinical trial results, the timing of initiation of clinical trials and the amounts of certain revenues and certain costs in comparison to prior years, or that otherwise relate to future periods, are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market. Among other things, the period for which our cash resources are sufficient could be shortened if expenditures are made earlier or in larger amounts than anticipated or are unanticipated, if anticipated revenue or cost sharing arrangements do not materialize, or if funds are not otherwise available on acceptable terms; results of clinical trials may be delayed or may never become available due to complications in the collection or interpretation of statistical data, unavailability of resources, actions or inactions by our present or future collaboration partners, insufficient enrollment in such trials or unanticipated safety issues; plans to initiate new clinical trials may change depending on availability of resources, actions or inactions by our present or future collaboration partners or unanticipated safety issues; and our revenues may be lower than anticipated, and our costs may be higher than expected, due to actions or inactions by our present or future collaboration partners, unanticipated safety issues or unavailability of additional licensing or collaboration opportunities. These and other risks, including those related to the generally unstable nature of current economic and financial market conditions; the results of discovery research and preclinical testing; the timing or results of pending and future clinical trials (including the design and progress of clinical trials; safety and efficacy of the products being tested; action, inaction or delay by the FDA, European or other regulators or their advisory bodies; and analysis or interpretation by, or submission to, these entities or others of scientific data); changes in the status of existing collaborative or licensing relationships; the ability of collaborators, licensees and other third parties to meet their obligations and their discretion in decision-making; our ability to meet the demands of the United States government agency with which we have entered our government contracts; competition; market demand for products; scale-up, manufacturing and marketing capabilities; availability of additional licensing or collaboration opportunities; international operations; share price volatility; our financing needs and opportunities; uncertainties regarding the status of biotechnology patents; uncertainties as to the costs of protecting intellectual property; and risks associated with our status as a Bermuda company, are described in more detail in “RISK FACTORS” in any supplement to this prospectus. We undertake no obligation to publicly update any forward-looking statements, regardless of any new information, future events or other occurrences. We advise you, however, to consult any additional disclosures we make in our reports to the SEC on Forms 10-K, 10-Q and 8-K.

## FINANCIAL RATIOS

The following table sets forth our ratio of earnings to fixed charges and the amount of deficiency for periods in which the ratio indicates less than one-to-one coverage:

	Three Months Ended March 31, 2011	Year Ended December 31,				
		2010	2009	2008	2007	2006
Ratio of earnings to fixed charges (1)	N/A(2)	N/A(2)	1.9	N/A(2)	N/A(2)	N/A(2)

(1) For these purposes, earnings are defined as income before income taxes and fixed charges and fixed charges include interest expense and the portion of rental expense which is deemed to represent interest.

(2) Earnings were insufficient to cover fixed charges by \$6.3 million for the three months ended March 31, 2011 and \$68.7 million, \$45.6 million, \$12.3 million, and \$51.8 million for the years ended December 31, 2010, 2008, 2007 and 2006, respectively.

## USE OF PROCEEDS

Unless otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities under this prospectus for general corporate purposes, including research and development projects, including the development of additional indications for XOMA 052, the development or acquisition of new products or technologies, equipment acquisitions, general working capital and operating expenses.

We have not determined the amounts we plan to spend on any of the areas listed above or the timing of these expenditures. As a result, our management will have broad discretion to allocate the net proceeds from our sale of securities. We may set forth in the applicable prospectus supplement our intended use for the net proceeds received from the sale of any securities. Pending application of the net proceeds, we intend to invest the net proceeds in investment-grade, interest-bearing securities.

## DESCRIPTION OF SHARE CAPITAL

The following statements with respect to our share capital are subject to the detailed provisions of our memorandum of continuance and bye-laws. These statements do not purport to be complete and, while we believe the descriptions of the material provisions of the memorandum of continuance and bye-laws incorporated by reference are accurate statements with respect to such material provisions, such statements are subject to the detailed provisions in the memorandum of continuance and bye-laws, to which reference is hereby made for a full description of such provisions.

### Common Shares

#### General

Our memorandum of continuance and bye-laws provide that our authorized common share capital is limited to 92,666,666 common shares, par value U.S.\$0.0075 per share. As of June 2, 2011, there were 29,797,944 common shares issued and outstanding.

#### Voting

The holders of common shares are entitled to one vote per share. Subject to the rights of any series of preference shares issued from time to time, all actions submitted to a vote of shareholders shall be voted on by the holders of common shares, voting together as a single class (together with the Series A Preference Shares (as described below) and any other shares having general voting rights, if any), except as provided by law.

#### Dividends

Holders of common shares are entitled to participate, on a share for share basis, with the holders of any other common shares issued and outstanding, with respect to any dividends declared by our board of directors, subject to the rights of holders of preference shares. Dividends will generally be payable in U.S. dollars. We have not paid cash dividends on the common shares. We currently do not intend to pay dividends and intend to retain any of our earnings for use in our business and the financing of our capital requirements for the foreseeable future. The payment of any future cash dividends on the common shares is necessarily dependent upon our earnings and financial needs, along with applicable legal and contractual restrictions.

#### Liquidation

Upon our liquidation, holders of our common shares will be entitled to receive any assets remaining after the payment of our debts and the expenses of the liquidation, subject to such special rights as may be attached to any other class of shares.

#### Redemption

The common shares are not subject to redemption either by us or the holders thereof.

#### Variation of Rights

Under our bye-laws, if at any time our share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of the issue of the shares of that class) may be varied with the

consent in writing of the holders of a majority of the issued shares of that class or with the sanction of a resolution passed by the holders of a majority of such shares at a separate general meeting.

Transfer Agent and Registrar

The transfer agent and branch registrar for our common shares is Wells Fargo Shareowner Services.

Listing on The NASDAQ Global Market

Our common shares are listed on The NASDAQ Global Market under the symbol "XOMA."

## Preference Shares

### General

Under our memorandum of continuance and bye-laws, we have the authority to issue 1,000,000 preference shares, par value U.S.\$0.05 per share. Of these, 210,000 preference shares have been designated Series A Preference Shares (the “Series A Preference Shares”) and 8,000 preference shares were previously designated Series B Preference Shares (the “Series B Preference Shares”). Under our bye-laws, subject to the special rights attaching to any class of our shares not being varied and to any resolution approved by the holders of 75% of the issued shares entitled to vote in respect thereof, our board of directors may establish one or more classes or series of preference shares having the number of shares, designations, relative voting rights, dividend rates, liquidation and other rights, preferences and limitations that the board of directors fixes without any shareholder approval.

The following summary of terms of our preference shares is not complete. You should refer to the provisions of our memorandum of continuance and bye-laws and the resolutions containing the terms of each class or series of the preference shares which have been or will be filed with the SEC at or prior to the time of issuance of such class or series of preference shares and described in the applicable prospectus supplement. The applicable prospectus supplement may also state that any of the terms set forth herein are inapplicable to such series of preference shares, provided that the information set forth in such prospectus supplement does not constitute material changes to the information herein such that it alters the nature of the offering or the securities offered.

Issuances of preference shares are subject to the applicable rules of The NASDAQ Stock Market or other organizations on whose systems our preference shares may then be quoted or listed.

Depending upon the terms of preference shares established by our board of directors, any or all series of preference shares could have preferences over the common shares with respect to dividends and other distributions and upon our liquidation. Issuance of any such shares with voting powers, or issuance of additional common shares, would dilute the voting power of the issued and outstanding common shares.

### Terms

The terms of each series of preference shares will be described in any prospectus supplement related to such series of preference shares. The board of directors in approving the creation of a series of preference shares has authority to determine, and the applicable prospectus supplement may set forth with respect to such series, the following terms, among others:

- the number of shares constituting that series and the distinctive designation of that series;
- the dividend rate on the shares of that series, if any, whether dividends will be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- the voting rights for shares of the series, if any, in addition to the voting rights provided by law;
- the conversion or exchange privileges for shares of the series, if any (including, without limitation, conversion into common shares), and the terms and conditions of such conversion or exchange, including provisions for adjustment of the conversion or exchange rate in such events as the board will determine;

- whether or not the shares of that series will be redeemable and, if so, the terms and conditions of such redemption, including the manner of selecting shares for redemption if less than all shares are to be redeemed, the date or dates upon or after which they will be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;
- any sinking fund for the redemption or purchase of shares of that series and the terms and amount of such sinking fund;
- the conditions and restrictions upon the creation of indebtedness of XOMA or any of our subsidiaries, upon the issue of any additional shares (including additional shares of such series or any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by us or any of our subsidiaries of, any of our issued and outstanding shares;

- the rights of the shares of that series in the event of our voluntary or involuntary liquidation, dissolution or winding up, and the relative rights of priority, if any, of payment of shares of that series; and
- any other relative participating, optional or other special rights, qualifications, limitations or restrictions of that series.

#### The Series A Preference Shares

There are no Series A Preference Shares issued and outstanding. Pursuant to the rights of the Series A Preference Shares, subject to the rights of holders of any shares of any series of preference shares ranking prior and superior, the holders of Series A Preference Shares are entitled to receive, when, as and if declared by our board of directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year, commencing on the first dividend payment date after the first issuance of a share or fraction of a share of Series A Preference Shares, in an amount per share equal to the greater of (a) U.S.\$1.00 or (b) 1,000 times the aggregate per share amount of all cash dividends, plus 1,000 times the aggregate per share amount of all non-cash dividends or other distributions, other than a dividend or bonus issue payable in common shares, declared on the common shares since the immediately preceding dividend payment date, or, with respect to the first dividend payment date, since the first issuance of Series A Preference Shares.

In addition to any other voting rights required by law, holders of Series A Preference Shares have the right to vote on all matters submitted to a vote of our shareholders with each share of Series A Preference Shares entitled to 1,000 votes. Except as otherwise provided by law