

XOMA LTD /DE/
Form DEF 14A
April 14, 2009

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

XOMA LTD.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

XOMA LTD.
2910 Seventh Street
Berkeley, California 94710
(510) 204-7200

April 14, 2009

To Our Shareholders:

You are cordially invited to attend the annual general meeting of shareholders of XOMA Ltd. on May 21, 2009 at 9:00 a.m. local time, which will be held at our offices at 2910 Seventh Street, Berkeley, California.

Details of business to be conducted at the annual general meeting are provided in the enclosed Notice of Annual General Meeting of Shareholders and Proxy Statement. Also enclosed for your information is a copy of our Annual Report to Shareholders for 2008. Some of our shareholders will be accessing these materials and appointing a proxy through the Internet and may not be receiving a paper proxy card by mail.

We hope that you will attend the annual general meeting. In any event, please promptly sign, date and return the enclosed proxy in the accompanying reply envelope or appoint a proxy by telephone or through the Internet.

Sincerely yours,

Steven B. Engle
Chairman of the Board,
Chief Executive Officer
and President

Enclosures

XOMA LTD.

NOTICE OF ANNUAL GENERAL MEETING OF SHAREHOLDERS
TO BE HELD AT 9:00 A.M. ON MAY 21, 2009

To the Shareholders of XOMA Ltd.:

Notice is hereby given that the annual general meeting of shareholders of XOMA Ltd. (the "Company") will be held at the Company's offices at 2910 Seventh Street, Berkeley, California, on May 21, 2009, at 9:00 a.m. local time, for the following purposes:

1. To elect directors;
2. To appoint Ernst & Young LLP to act as the Company's independent auditors for the 2009 fiscal year and authorize the Board of Directors to agree to such auditors' fee;
3. To receive the Company's audited financial statements for the 2008 fiscal year;
4. To approve the increase of the Company's authorized share capital by the creation of an additional 190,000,000 Common Shares;
5. To approve an amendment to the Company's 1981 Share Option Plan to increase the number of shares issuable over the term of the plan by 6,500,000 shares to 32,100,000 shares in the aggregate;
6. To approve amendments to the Company's 1992 Directors Share Option Plan to:
 - (a) effective as of July 1, 2008, in order to compensate the Company's non-employee directors for a reduction in their cash compensation, (1) increase the number of shares automatically granted under such plan to non-employee directors (other than the Lead Independent Director) to 35,000 per year, (2) change the number of shares automatically granted to non-employee directors who serve in the capacity of Lead Independent Director to 45,000 per year, and (3) increase the number of shares granted to non-employee directors as an initial grant on first becoming a director to 70,000;
 - (b) extend the vesting of options granted under such plan on or after July 1, 2008 to (1) monthly over three years (compared to in full on the first anniversary of the date of grant), in the case of initial awards and (2) monthly over one year (compared to in full on the date of grant), in the case of annual awards; and
 - (c) increase the number of shares issuable over the term of the plan by 250,000 shares to 1,600,000 shares; and
7. To consider and transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

The Board of Directors has fixed the close of business on April 1, 2009, as the record date for the determination of shareholders entitled to notice of, and to vote at, this meeting and at any adjournment or postponement thereof. On April 1, 2009, the Company had 142,326,493 Common Shares issued and outstanding.

By Order of the Board of
Directors

Christopher J. Margolin
Secretary

April 14, 2009
Berkeley, California

YOUR VOTE IS IMPORTANT

You are cordially invited to attend the meeting in person. Whether or not you plan to attend the meeting, please promptly mark, sign and date the enclosed proxy and mail it in the accompanying postage pre-paid envelope or appoint a proxy by telephone or through the Internet.

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XOMA LTD.

PROXY STATEMENT

TO THE SHAREHOLDERS:

The enclosed proxy is solicited on behalf of the Board of Directors (the "Board") of XOMA Ltd, a company organized under the laws of Bermuda ("XOMA" or the "Company"), for use at the annual general meeting of shareholders to be held at the Company's offices at 2910 Seventh Street, Berkeley, California, on May 21, 2009, at 9:00 a.m. local time, or any adjournment or postponement thereof, at which shareholders of record holding Common Shares on April 1, 2009, will be entitled to vote. On April 1, 2009, the Company had issued and outstanding 142,326,493 common shares, par value US\$.0005 per share ("Common Shares"). Holders of Common Shares are entitled to one vote for each share held.

All registered shareholders can appoint a proxy by paper proxy or by telephone by following the instructions included with their proxy card. Shareholders whose Common Shares are registered in the name of a bank or brokerage firm should follow the instructions provided by their bank or brokerage firm on voting their Common Shares. Shareholders whose Common Shares are registered in the name of a bank or brokerage firm participating in the Broadridge Financial Services, Inc. online program may appoint a proxy electronically through the Internet. Instruction forms will be provided to shareholders whose bank or brokerage firm is participating in Broadridge's program. Signing and returning the proxy card or submitting the proxy by telephone or through the Internet does not affect the right to vote in person at the annual general meeting.

In the case of registered shareholders, a proxy may be revoked at any time prior to its exercise by (a) giving written notice of such revocation to the Secretary of the Company at the Company's principal office, 2910 Seventh Street, Berkeley, California 94710, (b) appearing and voting in person at the annual general meeting, (c) properly completing and executing a later-dated proxy and delivering it to the Company at or before the annual general meeting or (d) retransmitting a subsequent proxy by telephone before the annual general meeting. Presence without voting at the annual general meeting will not automatically revoke a proxy, and any revocation during the meeting will not affect votes previously taken. Shareholders whose Common Shares are registered in the name of a bank or brokerage firm should follow the instructions provided by their bank or brokerage firm on revoking their previously appointed proxies. Abstentions and broker non-votes are each included in the number of Common Shares present and entitled to vote for purposes of establishing a quorum but are not counted in tabulations of the votes cast on proposals presented to shareholders.

The Company will bear the entire cost of solicitation, including preparation, assembly, printing, and mailing of this proxy statement, the proxy card, and any additional material furnished to shareholders. Copies of solicitation material will be furnished to brokerage houses, fiduciaries, and custodians holding in their names Common Shares that are beneficially owned by others to forward to such beneficial owners. The solicitation of proxies may be supplemented by one or more of telephone, telegram, or personal solicitation by directors, officers, or employees of the Company for no additional compensation. We have also engaged Georgeson Inc. to assist in such solicitation at an estimated fee of \$7,500 plus disbursements. Shareholders appointing a proxy through the Internet should understand that there may be costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, that must be borne by the shareholder.

The Company intends to mail this proxy statement and make it available on the Internet on or about April 14, 2009.

SHARE OWNERSHIP

The following table sets forth certain information regarding all shareholders known by the Company to be the beneficial owners of more than 5% of the Company's outstanding Common Shares and regarding each director, each named executive officer and all directors and the named executive officers as a group, together with the approximate percentages of outstanding Common Shares owned by each of them. Percentages are calculated based upon shares outstanding plus shares which the holder has the right to acquire under stock options exercisable within 60 days. Unless otherwise indicated, amounts are as of April 1, 2009 and each of the shareholders has sole voting and investment power with respect to the Common Shares beneficially owned, subject to community property laws where applicable. An individual's presence on this or any other table presented in this proxy statement is not intended to be reflective of such person's status as a "reporting person" under Section 16(a) of the Securities Exchange Act of 1934, as amended.

Name of Beneficial Owner	Number of Common Shares Beneficially Owned	Percentage of Common Shares Beneficially Owned
OrbiMed Group(1)	16,842,171	11.83%
QVT Financial LP(2)	10,116,033	7.11%
Barclays Global Investors NA(3) Platinum Asset Management Limited(4)	8,539,004	6.00%
William K. Bowes, Jr.(5)	7,680,859	5.40%
Steven B. Engle(6)	178,486	*
Charles J. Fisher, Jr., M.D.(7)	2,120,314	1.47%
Peter Barton Hutt(8)	161,517	*
Fred Kurland(9)	163,517	*
Christopher J. Margolin(10)	12,500	*
Patrick J. Scannon, M.D., Ph.D.(11)	522,397	*
Robert S. Tenerowicz(12)	533,293	*
W. Denman Van Ness(13)	351,911	*
John Varian(14)	270,264	*
Patrick J. Zenner(15)	9,722	*
All named executive officers and directors as a group as of the record date (11 persons)(16)	159,717	*
	4,483,638	3.06%

* Indicates less than 1%.

(1) As reported by the group comprised of OrbiMed Capital LLC, OrbiMed Advisors LLC and Samuel D. Isaly (collectively, the "OrbiMed Group") on Schedule 13G/A filed with the Securities and Exchange Commission (the "SEC") on February 10, 2009. Members of the OrbiMed Group are investment advisors and hold the securities on behalf of other persons who have the right to receive or the power to direct the receipt of dividends from, or proceeds from sale of, such securities. None of such other persons have an interest in the securities whose ownership is reported on the Schedule 13G/A that relates to more than 5% of the class. Information is as of February 9, 2009.

(2) As reported by the group comprised of QVT Financial LP (“QVT Financial”), QVT Financial GP LLC (“QVT Financial GP”), QVT Fund LP (“QVT Fund”) and QVT Associates GP LLC (“QVT Associates” and, collectively with QVT Financial, QVT Financial GP and QVT Fund, the “QVT Group”) on Schedule 13G/A filed with the SEC on February 9, 2009. QVT Financial LP (“QVT Financial”) is the investment manager for QVT Fund, which beneficially owns 9,114,227 Common Shares, and for Quintessence Fund L.P. (“Quintessence”), which beneficially owns 1,001,806 Common Shares. QVT Financial has the power to direct the vote and disposition of the Common Shares held by QVT Fund and Quintessence. Accordingly, QVT Financial may be deemed to be the beneficial owner of an aggregate amount of 10,116,033 Common Shares, consisting of the shares owned by QVT Fund and Quintessence. QVT Financial GP, as

General Partner of QVT Financial, and QVT Associates, as General Partner of QVT Fund and Quintessence, may each be deemed to beneficially own the same number of Common Shares reported by QVT Financial. Each of QVT Financial and QVT Financial GP disclaims beneficial ownership of the Common Shares owned by QVT Fund and Quintessence. QVT Associates GP LLC disclaims beneficial ownership of all Common Shares owned by QVT Fund and Quintessence, except to the extent of its pecuniary interest therein. Information is as of February 9, 2009.

- (3) As reported by Barclays Global Investors, NA on behalf of itself and certain related funds on Schedule 13G filed with the SEC on February 5, 2009. Amount is as of February 6, 2009.
- (4) As reported by Platinum Investment Management Limited on Schedule 13G/A filed with the SEC on February 11, 2009. Amount is as of December 31, 2008.
- (5) Includes 147,417 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.
- (6) Represents 2,120,314 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date. Does not include 16,580 Common Shares that have vested pursuant to the Company's Deferred Savings Plan.
- (7) Represents 161,517 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.
- (8) Represents 163,517 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.
- (9) Represents 12,500 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.
- (10) Includes 446,668 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date. Does not include 43,668 Common Shares that have vested pursuant to the Company's Deferred Savings Plan.
- (11) Includes 60,805 Common Shares held by The Patrick J. Scannon Separate Property Trust. Includes 407,710 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date. Does not include 44,131 Common Shares that have vested pursuant to the Company's Deferred Savings Plan.
- (12) Includes 314,791 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date. Does not include 21,383 Common Shares that have vested pursuant to the Company's Deferred Savings Plan.
- (13) Includes 49,481 Common Shares held by The Van Ness 1983 Revocable Trust, of which Mr. Van Ness is a trustee. Includes 220,333 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.
- (14) Represents 9,722 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.
- (15) Represents 159,717 Common Shares issuable upon the exercise of options exercisable as of 60 days after the record date.

(16) Includes 4,164,206 Common Shares issuable upon exercise of options exercisable as of 60 days after the record date. Does not include 125,762 Common Shares that have vested pursuant to the Company's Deferred Savings Plan.

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COMPENSATION OF EXECUTIVE OFFICERS

Compensation Discussion and Analysis

The primary objectives of the Company's compensation program are to enable the Company to attract, motivate and retain outstanding individuals and align their success with that of the Company's shareholders through the creation of shareholder value and achievement of strategic corporate objectives. We attract and retain executives by benchmarking against peer companies in our industry to ensure that our compensation packages remain competitive. This practice is discussed in greater detail below under the heading "Benchmarking." When creating an executive's overall compensation package, the different elements of compensation are considered in light of the role the executive will play in our achieving near term and longer term goals as well as the compensation packages provided to similarly situated executives at peer companies. We also tie short and long-term cash and equity rewards to the achievement of measurable corporate and individual performance criteria to create incentives that we believe enhance executive performance. Such performance criteria vary depending on individual executives' roles, but include value-adding achievements such as revenue generation, cost reduction, gains in production efficiency and timely completion of undertakings.

Benchmarking

The Compensation Committee has retained the services of Compensia, a consulting firm that specializes in executive compensation consulting (the "Consultant"), to assist the Compensation Committee in evaluating the Company's executive compensation program against the relevant market.

The Consultant created a survey (the "Executive Compensation Survey") which compared the Company's executive pay levels to those of a peer group of 30 companies. The peer group consisted of (1) core peers developed by targeting Phase II business and labor comparators with similar market capitalization and (2) aspirational peers generally representing Phase III and beyond comparators. The names of the companies that comprised the peer group are attached hereto as Appendix A. In preparing the Executive Compensation Survey, the Compensation Committee has relied on the Consultant to conduct its own research, compile its own survey data and provide a summary of such data relevant to the Compensation Committee's decisions with respect to setting executive compensation levels.

As noted above, the Compensation Committee considers the various benchmarks (i.e., the 25th percentile, the 50th percentile and the 75th percentile) based on the Executive Compensation Survey and chooses a benchmark for a particular year based on the level it deems most appropriate for the Company. For 2009, the Compensation Committee chose the 50th percentile as the benchmark. This process is performed to ensure that total compensation is competitive within the industry and appropriate when certain levels of performance are achieved. If, based on this evaluation, the Compensation Committee determines that the Company's current compensation levels are not appropriate or tailored to our compensation objectives, then the Compensation Committee may adjust the applicable compensation levels and targets accordingly.

As part of the benchmarking process, the Compensation Committee recognizes the practical reality that job responsibilities of persons with similar titles may vary significantly from company to company, and that a person's title is not necessarily descriptive of a person's duties. The Compensation Committee considers the scope and complexity of executive positions within the Executive Compensation Survey and compares these positions to the scope and complexity of our executive positions. The result is an assessment of the compensation being paid to our executives in light of the compensation being paid to persons performing duties of similar scope and complexity at the companies participating in the Executive Compensation Survey. The Compensation Committee uses this assessment to assist it in making decisions regarding appropriate compensation levels for our executive positions. The underlying principle of the evaluation methodology is to focus on identifying those positions that have a scope and complexity of

responsibilities that are comparable to those duties exercised by each of our particular executives.

Compensation Components

Base Salary. The level of compensation paid to an officer is determined on the basis of the individual's overall experience, responsibility, performance and compensation level in his or her prior position (for newly hired offi-

cers), the individual's overall performance and compensation level at the Company during the prior year (for current employees), the compensation levels of peer companies (including the biotechnology companies included in Appendix A) and other labor markets in which the Company competes for employees, the performance of the Company's Common Shares during the prior fiscal year and such other factors as may be appropriately considered by the Board, by the Compensation Committee and by management in making its proposals to the Compensation Committee.

Long-Term Incentive Program. The principal methods for long-term incentive compensation are the 1981 Share Option Plan (the "Option Plan") and Restricted Share Plan, and compensation thereunder principally takes the form of incentive and non-qualified option grants. These grants are designed to promote the convergence of long-term interests between the Company's key employees and its shareholders; specifically, the value of options granted will increase or decrease with the value of the Company's Common Shares. In this manner, key individuals are rewarded commensurately with increases in shareholder value. These grants also typically include a 4-year vesting period to encourage continued employment. The size of a particular option grant is determined based on the individual's position and contribution to the Company. For grants during 2008, the number of options granted were determined based on employee performance and perceived potential, the numbers of options granted to such individuals in the previous fiscal year, the aggregate number of options held by each such individual, the number of options granted to similarly situated individuals in the pharmaceutical and biotechnology industries, the price of the Company's Common Shares relative to other companies in such industries and the resulting relative value of such options; no specific measures of corporate performance were considered.

The Option Plan is described in greater detail below under the heading "Description of Option Plan."

CICP. In 2004, the Compensation Committee, the Board and the shareholders approved the CEO Incentive Compensation Plan (the "CICP") in order to make the Chief Executive Officer's ("CEO") compensation more commensurate with that of industry peers and because the Compensation Committee believed that it was not appropriate to include the CEO in the Management Incentive Compensation Plan given the CEO's active role in administering that plan.

Only our CEO is eligible to participate in the CICP and, depending on his or her performance and that of the Company, earn incentive compensation. The determination of the incentive compensation awarded for each fiscal year is as follows: The target award opportunity for the CEO is set at 50% of his or her base salary. As soon as practicable after the end of each fiscal year (the "Plan Period"), the Compensation Committee recommends to the Board and the Board determines whether and to what extent certain Company objectives have been met. For 2008, these objectives included the following: increasing total revenue to a target amount; reducing operating loss to a target amount; a year-end cash balance of a target amount; entering into new arrangements and revising certain existing arrangements; advancing proprietary products; accelerating product development; acquiring or constructing technologies, building capabilities and creating intellectual property that support strategic business goals; and maintaining effective financial and business controls (collectively, the "2008 Company Objectives"). For each Plan Period, unless 70% of the objectives for that Plan Period have been met, no incentive compensation will be awarded.

The incentive compensation is weighted based 70% on meeting Company objectives and 30% based on discretionary objectives. The award opportunity range for the CEO expressed as a percentage of his or her base salary is as follows: minimum award opportunity—25%; target award opportunity—50%; and maximum award opportunity—75%.

The performance of the CEO is typically rated as soon as practicable following the conclusion of the Plan Period. Distribution of incentive compensation is generally made in February or March of the succeeding year after the Plan Period. The incentive awards granted under the CICP in 2008 and thereafter are payable entirely in cash.

In February of 2008, the Board determined that, notwithstanding that Mr. Engle had met a percentage of the 2008 Company Objectives in excess of the 70% minimum required by the CICP in order to make an award thereunder, in light of current economic conditions and in order to conserve the Company's cash resources, it was in the best interest of the Company not to award any incentive compensation under the CICP for 2008.

MICP. Certain employees are also compensated through the Management Incentive Compensation Plan (the "MICP"), in which officers (other than the CEO) and employees who have the title of Senior Director, Director or

Manager, as we