3. BAKER & McKENZIE/RICHARDS, LAYTON & FINGER POISON PILL DOCUMENTS

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<th>Date:</th>
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<td>To:</td>
<td>The Board of Directors of XYZ, Inc.</td>
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<td>Re:</td>
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We have been asked to advise the Board of Directors of XYZ, Inc. (the “Company”) in connection with the possible implementation of a stockholder rights plan (“Rights Plan”). We believe the Board of Directors should consider adopting such a plan for the following reasons: First, the Company may be considered an attractive target for an unsolicited takeover proposal. The price of the Company’s common stock has declined from a 52-week high of $___ to a recent trading range of $____. The current trading prices do not reflect the prospective impact of certain of the Company’s initiatives, such as the implementation of expense controls, the anticipated roll-out of new product lines, and the benefits of increased research and development expenditures. Management anticipates the benefits of the initiatives to drop to the bottom line and eventually lead to increased gross revenues. Second, in light of the declines this year in stock prices, approximately 140 companies adopted stockholder rights plans during the first half of 2001, an increase, according to Thompson Financial Securities Data, of 45% over the same period in 2000. Additionally, investment bankers view such plans as low cost insurance for takeover protections in today’s environment of plunging stock prices. A properly designed Rights Plan will assist the Board of Directors in establishing a “level playing field” for negotiations with prospective acquirors. Consequently, we believe that the Board of Directors should consider the adoption of a stockholder rights plan as an important component of its stockholder protection strategy.

An effectively implemented, properly designed Rights Plan gives the Board of Directors a powerful tool to deal with a prospective acquiror to make certain that any proposed transaction is, in the Board’s view, in the best interest of the Company and its stockholders. While a Rights Plan will not, and is not intended to, prohibit a person from initiating or completing an acquisition of the Company, it is intended to strengthen the ability of the Board of Directors to fulfill its fiduciary duties to take actions which are in the best interests of stockholders.

In connection with any decision with respect to the Company’s adoption of a Rights Plan, we recommend that the Board consider the documents attached hereto. These documents consist of the following:

1. Overview Memorandum;
2. Questions and Answers Regarding the Rights Plan;
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3. Summary of the Terms of the Proposed Rights Plan;
5. Illustration of Dilution;
6. Form of Letter to Stockholders; and
7. Form of Press Release.

If, after consideration of the materials included with this memorandum, the Board wishes to proceed with the possible implementation of a Rights Plan, we advise the Board to obtain the advice and counsel of its financial advisors regarding, among other things, the current mergers and acquisitions environment and the effect on the price of the Company’s common stock as a result of the implementation of a Rights Plan. We would also then provide the Board with a copy of the proposed Rights Plan.

OVERVIEW

We believe it is appropriate for XYZ, Inc. (the “Company”) to consider whether to adopt a stockholder rights plan (a “Rights Plan”). An effectively implemented, properly designed Rights Plan gives the Board of Directors a powerful tool to deal with a prospective acquiror to make certain that any proposed transaction is, in the Board’s view, in the best interests of the Company and its stockholders. The first Rights Plan was adopted by Crown Zellerbach Corporation in July 1984. Today, more than 2,300 Rights Plans are currently in effect.

A Rights Plan is designed to deter certain types of takeover tactics and to otherwise encourage third parties interested in acquiring a company to negotiate with its Board of Directors. In particular, a Rights Plan is intended to help (i) reduce the risk of coercive two-tiered, front-end loaded or partial offers which may not offer fair value to all stockholders; (ii) mitigate against market accumulators who through open market and/or private purchases may achieve a position of substantial influence or control without paying to selling or remaining stockholders a fair control premium; (iii) deter market accumulators who are simply interested in putting the Company “into play”; and (iv) preserve the Board of Directors’ bargaining power and flexibility to deal with third-party acquirors and to otherwise seek to maximize values for all stockholders.

While a Rights Plan will not, and is not intended to, insulate the Company from all takeover attempts, it is intended to strengthen the ability of the Board of Directors to fulfill its fiduciary duties to take actions which are in the best interests of stockholders. Thus, for example, the Rights Plan should help substantially in deterring attempts to take over the Company on terms which are determined by the Board of Directors not to be acceptable. A Rights Plan, however, is not designed to deter a proxy contest or a fair offer for the whole Company. Also, a
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Rights Plan may have little effect on a bidder which is well financed and prepared to pay a fair price for all shares in cash.

This memorandum discusses legal and financial considerations relating to the adoption of a Rights Plan, and also briefly describes the terms of a Rights Plan which we recommend for consideration. Tab 3 hereto contains a summary of the terms of the plan we would recommend that the Board consider.

DISCUSSION

I. General Considerations

Board adoption. A Rights Plan may be authorized and implemented by Board action without any stockholder vote. Following the adoption of a Rights Plan, a press release would be issued and a letter describing the plan would be sent to stockholders. Copies of proposed forms of press release and letter to stockholders are attached at Tab 7 and Tab 6, respectively.

Modification by Board. As more fully described in the section below entitled "Basic Terms," the Board is given substantial flexibility to amend the Rights Plan. In addition, the rights may be redeemed for nominal consideration prior to their becoming irrevocable.

Reasons for adopting a Rights Plan. Stockholder Rights Plans are basically designed to deter unfair takeover tactics and otherwise to encourage third parties interested in acquiring a company to negotiate with its Board of Directors. In particular, Rights Plans similar to the plan recommended for consideration by the Company are intended to put the Board of Directors in a better position in dealing with the types of activities and tactics described in clauses (i) through (iv) in the second paragraph under "Overview" above.

Standards and procedures. In connection with considering the adoption of a Rights Plan, the Board of Directors should follow certain standards and procedures, including, among others:

1. The Board should consider the perceived threats to the Company and its stockholders of coercive or unfair offers and accumulation programs;

2. The Rights Plan should be tailored so that it is reasonable in relation to the threats posed. Rights Plans should not be designed to bar an offer which the Board deems beneficial to stockholders;

3. The Board should receive advice from its legal and financial advisors concerning the current takeover environment, particularly circumstances peculiar to the Company and its industry, the financial and market impact of adoption of a Rights Plan, and the legality of the plan under applicable Delaware law;
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4. The Board should be provided with and review the documents constituting the particular Rights Plan under consideration and a reasonable summary (as included herein) thereof;

5. The Board’s legal and financial advisors should discuss with the Board the plan’s terms, purposes and effects, and the factors relevant to its adoption. The Board’s independent directors should be actively involved; and

6. Sufficient time for full review and informed decision-making should be taken.

Financial and tax effects. The adoption of a Rights Plan should have no impact on earnings per share and should not otherwise affect the financial statements of the Company until the rights trade separately and are “in the money.”

The distribution of rights pursuant to a Rights Plan should not be taxable to the Company or to stockholders. However, stockholders may, depending upon the circumstances, recognize taxable income in the event that the rights become exercisable for common stock (or other consideration) of the Company or for common stock of the acquiring company. The Company’s redemption of the rights also will be a taxable event to stockholders. A memorandum describing certain financial accounting and tax consequences of the adoption of a Rights Plan is included under Tab 4.

II. Basic Terms

The following is a general description of the stockholder Rights Plan which we recommend for consideration by the Company’s Board. However, the terms of this Rights Plan can be varied to address any specific concerns that the Company or its Board may have. Set forth under “Common Variations” below are summaries of certain common provisions that other companies have included in their Rights Plans.

To implement the Rights Plan, the Board of Directors would authorize a dividend to all holders of the Company’s common stock of one “right” for each share of common stock outstanding (the “Common Stock”). Each right would initially entitle its registered holder to purchase from the Company a fraction of a share of a new series of preferred stock of the Company (which is intended to be essentially the economic equivalent of the Common Stock), at an initial price intended to reflect the long-term trading value of a share of Common Stock over the term of the plan (the “Purchase Price”). Premiums over current market used by other companies have generally been in the 300-500% range, but the Purchase Price selected for the Company should be specifically determined based on advice from the Company’s financial advisors.

Until a person acquires beneficial ownership of 15% or more of the outstanding Common Stock (thereby becoming an “Acquiring Person”)
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or commences a tender offer that would result in his owning 15% or more of the outstanding Common Stock, the rights (i) are evidenced by
the Common Stock certificates, (ii) may be transferred with and only with the Common Stock and (iii) are not exercisable. Upon the occurrence of any such events the rights become exercisable and separate certificates are distributed to the holders of record of the Common Stock; thereafter, the Common Stock and the rights trade separately.

The rights expire after a period of time from the date of issuance, unless earlier redeemed by the Company (as described below). We recommend 10 years as the term of the rights. The Board of Directors of the Company generally may redeem the rights at a nominal price (i.e., $0.001 per right) until someone becomes an Acquiring Person.

If any person becomes an Acquiring Person, each holder of a right (other than the Acquiring Person and its affiliates and associates) thereafter has the right to receive, upon exercise of the right at the Purchase Price, Common Stock (or, under certain circumstances, a combination of cash, Common Stock, other securities or other assets) having a value of two times such Purchase Price.

If anyone becomes an Acquiring Person and the Company then (i) engages in a merger or other business combination transaction with another person in which the Common Stock are changed or exchanged, or (ii) sells or transfers 50% or more of its assets or earning power to another person or persons, each right (other than rights of the Acquiring Person and its affiliates and associates, which will have become void) thereafter entitles the holder of such right to receive, upon exercise of the right at the Purchase Price, Common Stock of such other person (or, in certain circumstances, of an affiliate of such other person) having a value of two times such Purchase Price.

At any time after any person becomes an Acquiring Person and prior to the earlier of one of the events described in clause (i) or (ii) in the previous paragraph or the acquisition by any person of 50% or more of the outstanding Common Stock, the Board of Directors may exchange the rights (other than rights held by the Acquiring Person and its affiliates or associates, which will have become void), in whole or in part, for Common Stock (or fractional shares of preferred stock having essentially equivalent rights, preferences and privileges) having a value per right equal to the difference between the value of the Common Stock receivable upon exercise of the right and the Purchase Price.

Until a right is exercised, holders have no stockholder rights (such as voting rights or rights to receive dividends). The terms of the rights, other than the redemption price, may be amended by the Board of Directors in any manner as long as the rights are redeemable. Thereafter, the terms of the rights may be amended in any manner, as long as the amendment does not adversely affect the interests of holders of rights.
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III. Common Variations

Although most modern Rights Plans contain the provisions described under "Basic Terms" above, a number of variations have developed. Set forth below is a general discussion of two of the most common variations.

Many Rights Plans contain provisions that provide that a person does not become an "Acquiring Person" by acquiring beneficial ownership of 15% or more of the outstanding Common Stock if such person acquires such stock pursuant to a "Permitted Offer." Permitted Offer is often defined to mean a tender or exchange offer for all outstanding Common Stock at a price and on terms determined by the Board to be fair to stockholders and otherwise in the best interest of the Company and its stockholders. Sometimes, "Permitted Offer" is even more broadly defined to include the acquisition of shares pursuant to any transaction approved by the Board of Directors. Although these provisions may appear sensible, they are unnecessary in most modern Rights Plans for two reasons. First, many Rights Plans, including the one we recommend, provide that the Board of Directors can amend the Rights Plan in any respect, other than to change the redemption price, at any time prior to the time an Acquiring Person becomes such. Second, since the redemption price of the rights is generally a nominal amount (i.e., $.001 per right), the Board can redeem the rights if and when it believes an acquisition transaction is in the best interests of the Company and its stockholders.

Some Rights Plans also have a so-called "back-door" redemption clause, which allows the Board to redeem the rights after an Acquiring Person has become such. The advocates of this provision believe that it gives the Board more room to negotiate with a hostile acquiror. On the other hand, the inclusion of such a provision creates an incentive for an aggressive acquiror to cross the triggering threshold, thereby forcing the Board, and not the acquiror, to make the final decision on whether or not the rights will dilute the acquiror. For this reason, our recommended Rights Plan does not include such a "back-door" redemption clause.

CONCLUSION

In summary, a Rights Plan is a flexible vehicle by which a company, by considering a variety of different structures, options and variations and by tailoring the plan to address the Company's individual needs and objectives, can provide significant protection to its stockholders. We recommend that XYZ, Inc. consider the adoption of a Rights Plan as an important component of its stockholder protection strategy.

QUESTIONS AND ANSWERS ABOUT STOCKHOLDER RIGHTS PLANS

1. What is the purpose of a Stockholder Rights Plan?
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A stockholder rights plan ("Rights Plan") is designed to deter certain types of takeover tactics and to otherwise encourage third parties interested in acquiring the Company to negotiate with its Board of Directors. In particular, a Rights Plan is intended to help (i) reduce the risk of coercive two-tiered, front-end loaded or partial offers which may not offer fair value to all stockholders; (ii) mitigate against market accumulators who through open market and/or private purchases may achieve a position of substantial influence or control without paying to selling or remaining stockholders a fair control premium; (iii) deter market accumulators who are simply interested in putting the Company into play”; and (iv) preserve the Board of Directors’ bargaining power and flexibility to deal with third-party acquirers and to otherwise seek to maximize values for all stockholders.

While a Rights Plan will not, and is not intended, to insulate the Company from all takeovers, it is intended to strengthen the ability of the Board of Directors to fulfill its fiduciary duties to take actions which are in the best interests of stockholders. Thus, for example, the Rights Plan should help substantially in deterring attempts to take over the Company on terms which are determined by the Board of Directors not to be acceptable. A Rights Plan, however, is not designed to deter a proxy contest or a fair offer for the whole Company. Also, a Rights Plan may have little effect on a bidder which is well financed and prepared to pay a fair price for all shares in cash.

A Rights Plan is intended to achieve these goals by confronting a potential acquiror of the Company’s common stock (the “Common Stock”) with the possibility that the Company’s stockholders will be able to dilute substantially the acquiror’s equity interest by exercising “Rights” (which are issued under the Rights Plan) to buy additional stock in the Company—or in certain cases, stock of the acquiror—at a substantial discount.

2. How many companies have Rights Plans?

Since the first Rights Plan was adopted by Crown Zellerbach Corporation in July 1984, such plans have become commonplace in Delaware. Today, more than 2,300 Rights Plans are currently in effect. Many Fortune 500 companies have adopted Rights Plans. In addition, there is not a single state that does not permit their adoption.

3. Why have so many companies considered the adoption of Rights Plans?

In November 1985, the Delaware Supreme Court upheld a Rights Plan adopted by Household International as a legitimate action taken by a Board of Directors to protect its stockholders from coercive takeover tactics. In addition, a number of courts and state legislatures have recognized the potential benefits that a Rights Plan offers to assist a board of directors in protecting the best interests of all stockholders.
4. How does the Board of Directors go about implementing a Rights Plan?

If the Board of Directors, after fully considering a Rights Plan with the advice and the assistance of its legal and financial advisors, determines that the Rights Plan is in the best interests of the Company and its stockholders, the Board would declare a dividend distribution of one Right for each outstanding share of the Company’s Common Stock. Each Right initially would be attached to each share of Common Stock and would entitle the holder of such Right to purchase 1/1000th of a share of a new series of preferred stock at a price which is designed to reflect the projected long-term value of the Company’s Common Stock over the term of the Plan (e.g., typically 3 to 5 times the current market price of the Common Stock when the Rights Plan is adopted). One one-thousandth of a share of preferred stock is intended to be the economic equivalent of one share of Common Stock. However, upon the occurrence of a “Flip-in” or “Flip-over” Event (described below), each Right would become the right to purchase Common Stock of the Company or, in certain circumstances, the acquiring person, at a substantial discount.

5. Why are shares of preferred stock rather than Common Stock used in the Rights Plan?

Although the dividend, liquidation, voting and other rights of the preferred stock are designed so that each 1/1000th of a share of preferred stock would have rights similar to one share of Common Stock, preferred stock is used so that the Company’s authorized Common Stock could be used for other purposes and would not have to be reserved for issuance upon exercise of the Rights. In addition, since each full share of preferred stock is sufficient to cover the exercise of 1000 Rights, many fewer shares of preferred stock would have to be reserved.

6. Will the adoption of a Rights Plan affect earnings per share or be a taxable event?

Since the purchase price under the Rights greatly exceeds the market price of the Common Stock, the adoption of the Rights Plan should not be dilutive and should not affect reported earnings per share. In addition, the distribution of the Rights should not be a taxable event for either the Company or the stockholders receiving the Rights.

7. When do the Rights first become exercisable?

At the time the Rights Plan is adopted, the Rights are neither exercisable nor traded separately from the Common Stock. In fact, at the time of adoption of the Rights Plan, the Common Stock certificates represent both the outstanding Common Stock and the outstanding Rights.

The Rights will detach from the Common Stock (that is, Rights Certificates will be distributed and will trade separately) and become exercisable shortly after (i) any person or group acquires beneficial
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ownership of 15% or more of the outstanding Common Stock or (ii) any person or group commences a tender or exchange offer which would result in that person or group beneficially owning 15% or more of the outstanding Common Stock. The date on which the Rights detach is referred to as the Distribution Date.

8. Is it likely that many Rights would be exercised following the Distribution Date?

Until such time as the market price of the Common Stock rises above the exercise price of the Rights, it is highly unlikely that any holder of Rights would exercise such Rights. However, if a “Flip-in Event” or a “Flip-over Event” (described below) were to occur, the Rights would become valuable and entitle the holder to purchase Common Stock of the Company or common stock of the acquiror, as the case may be, at a substantial discount.

9. What are the “Flip-in” or “Flip-over” events and what rights are created by the occurrence of such events?

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**Flip-in Events** - A Flip-in Event would be deemed to have occurred if any person becomes the beneficial owner of more than a specified percentage of the outstanding Common Stock (i.e., 15%).

Upon the occurrence of a Flip-in Event, each holder of a Right, other than Rights held by an Acquiring Person, will thereafter be entitled to purchase Common Stock of the Company (or in certain circumstances cash, property or other securities of the Company) with a value at the time of such Flip-in Event of two times the then exercise price of the Rights. Since an Acquiring Person will not be entitled to exercise its Rights following the occurrence of a Flip-in Event, its equity interest in the Company would be substantially diluted.

**Flip-over Events** - A Flip-over Event will be deemed to have occurred if following the acquisition of 15% or more of the Common Stock by any person:

(i) the Company is acquired in a merger or other business combination;

(ii) the Company is the continuing or surviving corporation in a merger in which all or part of the Common Stock is exchanged for stock, cash or other property; or

(iii) 50% or more of the Company’s assets or earning power is sold or otherwise transferred in one transaction or a series of related transactions.

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The Flip-over Events are designed to avoid circumvention of the Flip-in rights and to make any second-step transaction economically prohibitive and thereby deter two-tiered or partial offers. Upon the occurrence of a Flip-over Event, each Right would entitle its holder to purchase common stock of the acquiring person with a value of twice the then exercise price of the Rights.

10. When do the Rights expire?

Unless redeemed or exchanged earlier by the Company, the Rights would expire ten years from the date of issuance. The ten year period has been selected by most companies to provide a meaningful period of protection.

11. May the Board of Directors redeem the Rights and at what price?

In general, the Board of Directors may redeem the Rights at any time prior to the time some person or group acquires beneficial ownership of, or announces its intention to commence, or commences, a tender or exchange offer with respect to, 15% or more of the outstanding Common Stock. The redemption price is $0.001 per Right.

In addition to the stated period for redemption, at any time prior to the date on which the Rights would otherwise become nonredeemable, the Board of Directors may amend the Rights Plan to extend the period for redemption.

12. Under what circumstances might the Board of Directors wish to redeem the Rights?

As described earlier, the Rights Plan is intended to enable the Board of Directors to respond to unsolicited acquisition proposals in a manner which is in the best interests of the Company and its stockholders. Accordingly, if there is a proposed takeover which the Board deems advantageous, the Board would be in a position to redeem the outstanding Rights at a nominal consideration. In addition, it is always possible that the circumstances relating to a particular unsolicited takeover and/or future developments in the takeover area, including future judicial decisions, might suggest at some future time that a Board of Directors consider the desirability of redeeming the outstanding Rights.

13. Will the Board of Directors be able to amend the provisions of the Rights once the Rights Plan has been adopted?

The Rights Plan provides the Board with significant flexibility to amend the terms of the Rights Plan. For so long as the Rights are redeemable, the Board may, without the approval of any holder of Rights, supplement or amend any provision of the Rights Plan other than to change the redemption price. At any time when the rights are not redeemable, the Board may amend the Rights Plan in any manner that does not adversely affect the holders of Rights.
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14. **May additional Rights be issued after the date the Rights Plan is adopted, including in connection with Common Stock issuances upon the exercise of stock options and convertible security conversions?**

Prior to the Distribution Date, all Common Stock issued by the Company would have Rights attached.

After the Distribution Date, in general, the Company would issue Rights in connection with the Common Stock issued upon the exercise of stock options or under any employee plan or arrangement, or upon the exercise, conversion or exchange of securities issued by the Company prior to the Distribution Date.

15. **Where will the Rights be traded?**

Since the Rights prior to the Distribution Date are deemed to be represented by the Common Stock certificates, the Rights will initially be listed and traded on the same exchanges on which the Common Stock are listed and traded. However, prior to the Distribution Date, there will be no separate trading market for the Rights.

16. **What will happen if the Company does not have sufficient Common Stock to issue following the occurrence of either a “Flip-in” or a “Flip-over” event?**

The Rights Plan provides that, following a “Flip-in” event, the Company would be required to reduce the purchase price or to substitute, if necessary, cash, preferred stock, debt securities or other property with a value equal to the Common Stock which would otherwise be issuable.

This should not be a problem following a “Flip-over” event since, under the terms of the Rights Plan, the Company may not engage in a transaction (e.g., a merger) constituting a “Flip-over” event unless the acquiring person has sufficient common stock authorized to permit the full exercise of the Rights.

17. **What impact would the adoption of the Rights Plan have on the Business Judgment Rule and future actions of the Board under the Plan?**

Following the adoption of the Rights Plan, the Board of Directors would of course continue to be required to exercise its duties with due care and loyalty and would continue to act as fiduciaries for the Company’s stockholders. In this regard, it should be noted that future decisions with respect to a redemption of the Rights, like all other decisions in the takeover area, may prove difficult. In addition, although the business judgment rule should apply to all future decisions (including redemption) it is possible that a court in reviewing all the facts and circumstances (including the existence of a Rights Plan) may subject a Board’s decision to greater scrutiny.

18. **Are there any disadvantages to adopting a Rights Plan?**
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The primary disadvantage would be that, if and when the Rights became nonredeemable, the Company would lose flexibility in engaging in transactions qualifying as "Flip-over" events. Even though this is a disadvantage, it is necessary to achieve the deterrent effect of the Rights Plan. In addition, a number of institutional investors have submitted stockholder proposals requesting that the Rights Plans be redeemed or submitted to a stockholder vote.

19. Why do some stockholders oppose Rights Plans?

Opponents of Rights Plans have asserted that the effect of a Rights Plan is to usurp the right of stockholders to consider third party offers for their shares. Opponents also assert that the primary motivation in adopting Rights Plans is entrenchment of management.

SUMMARY OF THE TERMS OF THE PROPOSED RIGHTS PLAN

20. Effectiveness. The Rights Plan shall be effective as of the date of the Rights Agreement for all shares of the Company’s common stock (the “Common Stock”) outstanding on the established Record Date and for all Common Stock issued prior to the earliest of the Distribution Date (as defined below), the redemption of the Rights, the exchange of the Rights or the expiration of the Rights. In addition, in certain limited circumstances, Rights may be issued with respect to shares of Common Stock issued after the Distribution Date.

21. Right Certificates. Right Certificates shall be distributed to stockholders as soon as practicable after the Distribution Date. Until the Distribution Date, Rights shall be evidenced by certificates for Common Stock.

22. Term. The rights will expire on the tenth anniversary of the date of the Rights Agreement unless earlier redeemed or exchanged by the Company as provided below.

23. Exercisability. Initially, the Rights will not be exercisable. The Rights shall become exercisable upon the earlier of (i) the tenth calendar day after the first public announcement that a person or group (other than the Company, any of its subsidiaries or any employee stock plan of the Company), together with its affiliates and associates, has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding Common Stock (such person or group being called an “Acquiring Person”), or (ii) the tenth business day after the commencement of, or first public announcement of an intention to commence, a tender or exchange offer which would result in a person or group obtaining beneficial ownership of 15% or more of the outstanding Common Stock (the earlier of such dates being called the “Distribution Date”). The timing of the Distribution Date is in some cases subject to extension by the Board of Directors. After the Distribution Date, the Rights shall be exercisable by the registered holders of the Right Certifi-
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cates. Each Right shall be exercisable for 1/1000th of a share of Series A Junior Participating Preferred Stock (the "Series A Preferred Stock") (as described below), subject to adjustment. The exercise price with respect to each Right shall be $___, subject to adjustment.

24. Detachability. Prior to the Distribution Date, the Rights shall be transferable only with the related Common Stock certificates and shall automatically be transferred with such certificates. After the Distribution Date, the Rights shall be separately transferable, and the Company will provide Right Certificates to all holders of Common Stock.

25. Terms of Series A Preferred Stock. The terms of the Series A Preferred Stock have been designed so that each 1/1000th of a share of Series A Preferred Stock will have economic attributes (i.e., participation in dividends and liquidation and voting rights) substantially equivalent to one whole share of the Common Stock of the Company. In addition, the Series A Preferred Stock have certain minimum dividend and liquidation preferences. See Exhibit A for a more detailed description of the Series A Preferred Stock.

26. The Flip-In Provision. In the event that a person becomes an Acquiring Person (a "Flip-In Event"), the holder of each Right (other than the Acquiring Person, its affiliates and associates and certain transferees thereof) will thereafter have the right to receive, upon exercise thereof, for the exercise price, in lieu of shares of Series A Preferred Stock, that number of Common Stock which at the time of such transaction would have a market value of twice the exercise price. The Company may at its option substitute 1/1000ths of a share of Series A Preferred Stock for some or all of the Common Stock so issuable. In the event there is insufficient Common Stock to permit exercise in full of Rights, the Company must issue shares of Series A Preferred Stock, cash, property or other securities of the Company with an aggregate value equal to twice the exercise price. Upon the occurrence of any such Flip-In Event, any Rights that are owned by an Acquiring Person, its affiliates and certain transferees thereof shall become null and void.

27. The Flip-Over Provision. In the event that, from and after a Flip-In Event, (a) the Company is acquired in a merger or other business combination, (b) the Company is the continuing or surviving corporation in a merger in which all or part of the Company’s Common Stock is exchanged for stock, cash or other property, or (c) 50% or more of the Company’s assets, or assets accounting for 50% or more of its net income, are sold, leased, exchanged or otherwise transferred (in one or more transactions), proper provision shall be made so that each holder of a Right (other than the Acquiring Person, its affiliates and associates and certain transferees thereof whose Rights became void) shall thereafter have the right to receive, upon the exercise thereof, for the exercise price, that number of shares of common stock of the acquiring company...
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which at the time of such transaction would have a market value of
twice the exercise price.

28. Redemption. The Rights are redeemable by the Board of Di-
rectors at a redemption price of $.001 per Right (the “Redemption
Price”) any time prior to the earlier of (i) the time that an Acquiring
Person becomes such, or (ii) the expiration date. Immediately upon
the action of the Board electing to redeem the Rights, and without any
further action and without any notice, the right to exercise the Rights
will terminate and the only right of the holders of Rights will be to
receive the Redemption Price.

29. Exchange. At any time after a Flip-In Event, but prior to a
Flip-Over Event or the time that any person becomes the beneficial
owner of 50% or more of the outstanding Common Stock, the Board may
exchange each Right for a number of shares of Common Stock (or
fractional shares of Series A Preferred Stock or similar securities) having
a value equal to the difference between the market value of the shares of
Common Stock receivable upon exercise of the Right and the exercise
price of the Right.

30. Amendment. For so long as the Rights are redeemable, the
Company may, without the approval of any holder of the Rights, supple-
ment or amend any provision of the Rights Agreement. At any time
when the Rights are not redeemable, the Company may amend the
Rights in any manner that does not adversely affect the holders of
Rights. In no event may any supplement or amendment be made which
changes the Redemption Price.

31. Voting. The holder of a Right, as such, will have no rights as a
stockholder of the Company, including, without limitation, the right to
vote or to receive dividends.

EXHIBIT A

DESCRIPTION OF SERIES A JUNIOR PARTICIPATING
PREFERRED STOCK

32. Designation, Par Value, and Ranking. The Company will be
authorized to issue shares of Series A Junior Participating Preferred
Stock, par value $.001 per share (“Series A Preferred Stock”). The
Series A Preferred Stock has the following features.

33. Dividends. The holders of Series A Preferred Stock are entitled
to receive quarterly cumulative dividends in an amount per share equal
to the greater of $10.00 or 1000 times the dividends declared on the
Common Stock since the preceding quarterly dividend payment date, or
with respect to the first quarterly dividend payment date, since the date
of issuance. Noncash dividends are payable in kind in a per share
amount equal to 1000 times any noncash dividends paid per share of
Common Stock.
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34. Voting Rights. Holders of Series A Preferred Stock are entitled to vote on each matter on which holders of Common Stock are entitled to vote, and shall have 1000 votes per share.

35. Certain Restrictions. Whenever quarterly dividends or distributions on the Series A Preferred Stock are in arrears, the Company's right to declare or pay dividends or other distributions on or to redeem or purchase any shares of stock ranking junior to or on a parity with the Series A Preferred Stock is subject to certain restrictions.

36. Liquidation Rights. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of shares of Series A Preferred Stock will be entitled to receive, before any distribution is made to holders of shares of Common Stock or any other stock ranking junior to the Series A Preferred Stock, a minimum of $1000 per share, plus an amount equal to any accrued dividends and distribution thereon whether or not declared, to the date of payment, and will be entitled to an aggregate payment of 1000 times the amount per share distributed to the holders of Common Stock.

37. Redemption. The shares of Series A Preferred Stock are not subject to redemption by the Company.

38. Amalgamation, Merger, etc. In the event of an amalgamation, merger or similar transaction in which the Common Stock are exchanged for or converted into other securities, cash or any other property, the shares of Series A Preferred Stock will be similarly exchanged or converted in an amount per share equal to 1000 times the amount per share of securities, cash or other property into which each share of Common Stock is changed or converted.

39. Adjustment of Participation Rights. In the event that, after the date of the Rights Agreement, a dividend in Common Stock is paid on the Common Stock, or the Common Stock is subdivided or combined, then the rights of the Series A Preferred Stock with respect to voting and participation in dividends, liquidation and merger consideration will automatically be adjusted proportionately.

40. Rank. The Series A Preferred Stock will rank senior to the Common Stock and, unless otherwise provided, junior to all future series of preferred stock.

FINANCIAL ACCOUNTING AND TAX CONSEQUENCES

Financial Accounting Consequences:

- No income statement impact unless and until the Rights become exercisable and are "in the money."
- Adoption of a Plan should have no balance sheet impact.
- Pooling considerations should no longer be relevant in light of the approval in June 2001 by the Financial Accounting Standards Board
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- The price paid to redeem Rights will be a charge to equity.
- Exercise of Rights and exchange of Rights for Common Stock will be treated as a capital transaction.

Tax Considerations:

- Distribution of Rights should not result in taxable income to the distributee or to the Company.
- When the Rights subsequently separate but are still "out of the money," there still should not be any taxable income to the distributee or the Company.
- If and when the Rights "flip-in" to the Company's Common Stock, it is again likely that there will not be any taxable event to the holder or the Company (although there is some possibility of taxability to holders of Rights if the "flip-in" can be linked to dividends received by the holders of the Company's Common Stock within three years of either side of the "flip-in" event). In addition, the "flip-in" could be taxable to holders of Rights if the Company has outstanding convertible securities with anti-dilution provisions which do not completely adjust for the "flip-in" of the Rights. In either case, the IRS could argue that the "flip-in" constitutes a taxable dividend to holders of Rights under the stock dividend rules of § 305 of the I.R.C. It also is possible that the "flip-in" event may be construed as a taxable exchange of a warrant to buy preferred stock (if the Rights were initially exercisable for preferred stock) for a warrant to buy Common Stock.

- If the Rights "flip-over" and become exercisable for Common Stock of the Acquiror, the holder would recognize a taxable gain (capital gain if the Right and the underlying stock are held as capital assets) equal to the difference between the holder's basis in the Right and the fair market value of the "new" Right.

- If the Company redeems the Rights prior to the time the Rights separate from the Company's Common Stock, the payment of the redemption price to Stockholders will in all likelihood be dividend income. If the Company redeems the Rights after the time the Rights separate from the Common Stock, it is not entirely clear whether the payment of the redemption price to holders of Rights will be taxable to holders of Rights as capital gain or ordinary income but, in any event, should not be dividend income.

- The Internal Revenue Service has ruled privately that Rights do not constitute "other property" or "boot" for purposes of the reorganization provisions of the Internal Revenue Code. Thus, the fact that
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Rights are to be issued with the Company's Common Stock as part of an acquisition by the Company should not restrict the Company's ability to consummate those forms of tax-free reorganizations that do not permit boot.

ILLUSTRATION OF DILUTION

The following hypothetical example illustrates the "economic hurt" or "poison" inherent in the Rights Plan.

Assume the Company has 1,000 shares outstanding and a person purchases 15% or more of the outstanding shares, thereby becoming an "Acquiring Person" and triggering the "flip-in." Assume further the market price of the Company's Common Stock is $1 per share and the exercise price of the Rights is $4 per share.

Dilution in Voting. If all stockholders other than the Acquiring Person (whose Rights become void if there is a "flip-in") exercised their Rights, the Acquiring Person's voting power would be diluted down from 15% (i.e., 150 shares owned out of 1,000 shares outstanding) to 1.92% (i.e., 150 shares owned out of 7,800 shares outstanding).

The 7,800 shares outstanding assumes that stockholders exercise all their rights by paying $4 in cash for each Right. Such an exercise of Rights would, after the "flip-in", entitle all stockholders (other than an Acquiring Person) to purchase 8 shares of stock for each Right. That is, they are entitled to use the $4 exercise price to purchase shares equal to $8 in value. This would result in the issuance of 6,800 additional shares (850 Rights times 8 shares per Right). Since there were already 1,000 shares outstanding the new total outstanding becomes 7,800 shares.

Economic Dilution. In the same example described above, the economic dilution for the Acquiring Person is quite substantial (assuming the Acquiring Person's stock was worth $1 per share—i.e., the market value immediately before the "flip-in" occurs), the Acquiring Person's shares fall in value by approximately 43.6% (from $1 per share to $0.564 per share).

This results from the following hypothetical analysis. Assume that the aggregate market value of the Company was $1,000 immediately before the "flip-in" (i.e., 1,000 shares at $1 per share). The issuance of 6,800 additional shares upon exercise of the 850 Rights held by all stockholders other than the Acquiring Person added $3,400 in cash to the value of the Company (i.e., 850 Rights times $4 per Right). This would increase the total value of the Company to $4,400, which results in a hypothetical value of $0.564 for each of the 7,800 outstanding shares.

FORM OF LETTER TO STOCKHOLDERS

Date, 2002

Dear XYZ, Inc. Stockholder:

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The Board of Directors has announced the adoption of a Stockholder Rights Plan. This letter describes the Plan and explains our reasons for adopting it. Also, we are enclosing a document entitled “Summary of Rights to Purchase Common Stock Shares of XYZ, Inc.” which provides more detailed information about the Rights Plan, and we urge you to read it carefully.

The Plan is intended to protect your interests in the event XYZ, Inc. ("Company") is confronted with an unsolicited takeover attempt or certain types of unfair takeover tactics. Specifically, the Plan contains provisions designed to deter a gradual accumulation of shares in the open market, a partial or two-tiered tender offer that does not treat all stockholders equally, the acquisition in the open market or otherwise of shares constituting control without offering fair value to all stockholders, or other abusive takeover tactics which the Board believes are not in the best interests of the Company's stockholders. These tactics unfairly pressure stockholders, squeeze them out of their investment without giving them any real choice, and deprive them of the full value of their shares.

A large number of other companies have Rights Plans similar to the one we have adopted. We consider the Rights Plan to be the best available means of protecting your right to retain your equity investment in Company and the full value of that investment, while not foreclosing a fair acquisition bid for the Company.

The Plan is not intended to prevent a takeover of the Company and will not do so. The mere declaration of the rights dividend should not affect any prospective offeror willing to make an all cash offer at a full and fair price or willing to negotiate with the Board of Directors, and will not interfere with a merger or other business combination transaction approved by your Board of Directors.

Prior to adopting the Rights Plan, the Board of Directors was concerned that a person or company could acquire control of the Company without paying a fair premium for control and without offering a fair price to all stockholders, and that, if a competitor acquired control of the Company, the competitor would have a conflict of interest with respect to the Company and could use any acquired influence over or control of the Company to the detriment of the other stockholders of the Company. The Board believes that such results would not be in the best interests of all stockholders.

The Rights may be redeemed by the Company at $0.001 per Right up to the time any person or group has acquired 15% or more of the Company's shares, and thus they should not interfere with any merger or other business combination approved by the Board of Directors.

Issuance of the Rights does not in any way weaken the financial strength of the Company or interfere with its business plan. The issuance of the Rights has no dilutive effect, will not affect reported

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earnings per share, is not taxable to the Company or to you, and will not
change the way in which you can currently trade the Company's shares.
As explained in detail below, the Rights will only be exercisable if and
when an event occurs which triggers their effectiveness. They will then
operate to protect you against being deprived of your right to share in
the full measure of the Company's long-term potential.

The Board was aware when it acted that some people have advanced
arguments that securities of the type we are issuing deter legitimate
acquisition proposals. We carefully considered these views and concluded
that the arguments are speculative and do not justify leaving stockhold-
ers without this protection against unfair treatment by an acquiror—who,
after all, is seeking his own company's advantage, not yours. The
Board believes that the Rights represent a sound and reasonable means
of addressing the complex issues of corporate policy created by the
current takeover environment.

The Rights will be issued to stockholders of record on ————, 2002, and will expire in ten years. Initially, the Rights will not be
exercisable, certificates will not be sent to you, and the Rights will
automatically trade with the Common Stock. However, ten days after a
person or group either acquires 15% or more of the Company's Common
Stock or commences a tender or exchange offer that would result in such
person or group owning 15% or more of the outstanding shares (even if
no purchases actually occur), the Rights will become exercisable and
separate certificates representing the Rights will be distributed. We
expect that the Rights will begin to trade independently from the
Common Stock at that time. At no time will the Rights have any voting
power.

Each Right initially will entitle the holder thereof to buy from the
Company one unit of a share of preferred stock for $.———. If, however,
any person acquires 15% or more of the Company's Common Stock, each
Right not owned by such 15%-or-more stockholder would become exercis-
able for the number of Common Stock of the Company (or in certain
circumstances cash, property or other securities) having at that time a
market value of two times the then current exercise price of the Right. If
the Company is acquired in a merger or other business combination, or
sells 50% or more of its assets or earning power to another person, at
any time after a person acquires 15% or more of the Company's Common
Stock, the Rights will entitle the holder thereof to buy a number of
Common Stock of the acquiring company having a market value of twice
the then current exercise price of each Right.

At any time after a person acquires 15% or more of the Company's
Common Stock and prior to the earlier of the time (i) the Company is
acquired in a merger or other business combination, (ii) the Company is
the continuing or surviving corporation in a merger and all or part of the
Company's Common Stock is exchanged for stock, cash or other proper-
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ity, or (iii) the Company sells 50% or more of its assets or earning power to another person, the Company may exchange each Right (other than Rights owned by a 15% or more stockholder which shall have become void) for a number of Common Stock of the Company (or in certain circumstances preferred stock of the Company) having a value equal to the difference between the market value of the Common Stock receivable upon exercise of the Right and the exercise price of the Right.

While, as noted above, the distribution of the Rights will not be taxable to you or the Company, stockholders may, depending upon the circumstances, recognize taxable income when the Rights become exercisable.

Maximizing long-term stockholder value is the major goal of the Company’s management and Board of Directors.

Sincerely,

Chairman of the Board

FOR IMMEDIATE RELEASE

CONTACT:

2002

XYZ, INC. ADOPTS
STOCKHOLDER RIGHTS PLAN

New York, New York—XYZ, Inc. ("XYZ") announced today that on ________, 2002, its Board of Directors adopted a Stockholder Rights Plan in which rights will be distributed as a dividend at the rate of one Right for each share of common stock, par value $0.001 per share, of XYZ (the "Common Stock") held by stockholders of record as of the close of business on ________, 2002. The Rights Plan is designed to deter certain types of unfair takeover tactics and to prevent an acquiror from gaining control of XYZ without offering a fair price to all of XYZ’s stockholders. The Rights will expire on ________, 2011.

Each Right initially will entitle stockholders to buy one one-thousandth of a share of Series A Junior Participating Preferred Stock Shares of XYZ, for $______. The Rights will be exercisable only if a person or group acquires beneficial ownership of 15% or more of XYZ’s Common Stock or commences a tender or exchange offer upon consummation of which such person or group would beneficially own 15% or more of XYZ’s Common Stock.

If any person becomes the beneficial owner of 15% or more of XYZ’s Common Stock, then each Right not owned by the 16%-or-more stockholder or related parties will entitle its holder to purchase, at the Right’s then current exercise price, shares of XYZ’s Common Stock (or in certain circumstances, cash, property, or other securities) having a value of twice the Right’s then current exercise price. In addition, if after any person has become a 15%-or-more stockholder, XYZ is involved in a
merger or other business combination transaction with another person in which XYZ does not survive or in which its Common Stock is changed or exchanged, or sells 50% or more of its assets or earning power to another person, each Right not owned by the 15%-or-more stockholder or related parties will entitle its holder to purchase, at the Right’s then current exercise price, shares of common stock of such other person having a value of twice the Right’s then current exercise price.

At any time after a person acquires 15% or more of XYZ’s Common Stock and prior to the earlier of the time (i) XYZ is involved in a merger or other business combination transaction with another person in which XYZ does not survive or in which its Common Stock is changed or exchanged, (ii) XYZ is the continuing or surviving corporation in a merger and all or part of its Common Stock is exchanged for stock, cash or other property, or (iii) XYZ sells 50% or more of its assets or earning power to another person, XYZ may exchange each Right (other than Rights owned by the 15%-or-more stockholder which shall have become void) for a number of shares of Common Stock of XYZ (or in certain circumstances shares of preferred stock of XYZ) having a value equal to the difference between the market value of the shares of Common Stock receivable upon exercise of the Rights and the exercise price of the Right.

XYZ will generally be entitled to redeem the Rights at $0.001 per Right at any time until a 15% position has been acquired.

Details of the Stockholder Rights Plan are outlined in a letter which will be mailed to all stockholders.

About XYZ (www.XYZ.com)

[description of XYZ business]

The statements in this release regarding projected results are preliminary and “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. In addition, this report contains other forward-looking statements including statements regarding the Company’s or third parties’ expectations, predictions, views, opportunities, plans, strategies, beliefs, and statements of similar effect. The forward-looking statements in this report are subject to a variety of risks and uncertainties. Actual results could differ materially. Factors that could cause actual results to differ include but are not limited to the following: [description of factors].