

# **Botry-Zen Limited**

## **Independent Adviser's Report**

### **In Respect of the Proposed Allotment of Shares to Melic Innovators Limited**

*June 2009*

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## 1. Introduction

### 1.1 Background

Botry-Zen Limited (**Botry-Zen** or the **Company**) is listed on the alternative market (**NZAX**) operated by NZX Limited (**NZX**) with a market capitalisation of \$5.2 million as at 26 June 2009 and audited equity of \$0.1 million as at 31 March 2009.

Botry-Zen commenced operations in 2001. The Company produces, distributes and sells two products for the control of plant diseases:

- *BOTRY-Zen* (a biological )
- *ARMOUR-Zen* (a natural product).

A profile of Botry-Zen is set out in section 3.

### 1.2 Proposed Allotment of Shares to Melic

Melic Innovators Limited (**Melic**) currently holds 26,841,500 shares in the Company, representing 12.94% of the shares in Botry-Zen.

The Company announced on 29 May 2009 that, subject to shareholder approval, Botry-Zen proposes to issue 45,454,545 new ordinary shares to Melic (the **Melic Allotment**).

The additional 45,454,545 ordinary shares will represent 17.97% of the Company's ordinary shares on issue after the Melic Allotment.

The Melic Allotment will increase Melic's shareholding in the Company to 72,296,045 shares, representing 28.59% of the shares in Botry-Zen after the Melic Allotment.

The terms of the Melic Allotment are set out in the Share Subscription Agreement between Botry-Zen and Melic dated 29 May 2009. The key terms are:

- an issue price of \$0.022 per share
- the shares will rank pari passu with all existing ordinary shares on issue
- the shares will be issued three working days after Botry-Zen obtains all necessary shareholder, NZX and other regulatory approvals for the allotment.

The Melic Allotment is conditional on the Company obtaining all necessary shareholder, NZX and other regulatory approvals for the allotment by 31 July 2009.

The Melic Allotment will raise \$1.0 million (before costs). Proceeds from the Melic Allotment will be used by Botry-Zen to fund its ongoing working capital requirements.

### 1.3 Melic

Melic is an investment company representing the interests of Michael Mellon and associates. Melic previously operated Bush Road Limited, a food processing business based in Mosgiel.

Melic's shareholders are:

- Michael Mellon – 89.6%
- Patricia Mellon – 4.0%
- Kelvin Coe – 4.0%
- Maureen Hore – 2.4%.

Melic's directors are Michael Mellon, Kelvin Coe and Maureen Hore.

Melic acquired 25,000,000 shares in Botry-Zen on 1 September 2008 via a private placement at \$0.020 per share. Melic has increased its shareholding by a further 1,841,500 shares via on-market purchases since then.

Kelvin Coe personally holds 500,000 shares in Botry-Zen (0.24%) and Maureen Hore personally holds 300,000 shares in Botry-Zen (0.14%).

Kelvin Coe and Maureen Hore could be considered to be associated with Melic for the purposes of the Takeovers Code (the **Code**) by virtue of their directorships and shareholdings in Melic. On this basis, Melic and its associates (Kelvin Coe and Maureen Hore) could be considered to currently hold 27,641,500 shares in the Company, representing 13.32% of the shares in Botry-Zen.

The Melic Allotment will increase Melic and its associates' shareholding in the Company to 73,096,045 shares, representing 28.90% of the shares in Botry-Zen after the Melic Allotment.

### 1.4 Regulatory Requirements

Rule 6 of the Code prohibits:

- a person who holds or controls less than 20% of the voting rights in a code company from increasing its control of voting rights beyond 20%
- a person holding 20% or more of the voting rights in a code company from increasing its control of voting rights

unless the person and that person's associates comply with exceptions to this fundamental rule.

One of the exceptions, set out in Rule 7(d) of the Code, enables a person and its associates to increase their control of voting rights by an allotment of shares if the allotment is approved by an ordinary resolution of the code company.

The Melic Allotment will result in Melic increasing its shareholding in the Company from 12.94% to 28.59%. Accordingly, the Company's shareholders other than Melic and its associates (the **Non-associated Shareholders**) will vote on an ordinary resolution in respect of the Melic Allotment (resolution 2) at Botry-Zen's special meeting on 24 July 2009.

Melic and its associates are not permitted to vote on the resolution.

Rule 18 of the Code requires the directors of a code company to obtain an Independent Adviser's Report on the merits of an allotment under Rule 7(d).

This Independent Adviser's Report is to be included in the notice of meeting pursuant to Rule 16(h).

## 1.5 Purpose of the Report

The directors of Botry-Zen not associated with Melic (the **Independent Directors**) have engaged Simmons Corporate Finance Limited (**Simmons Corporate Finance**) to prepare an Independent Adviser's Report on the merits of the allotment of shares under the Melic Allotment in accordance with Rule 18 of the Code.

Simmons Corporate Finance was approved by the Takeovers Panel on 29 May 2009 to prepare the Independent Adviser's Report.

Simmons Corporate Finance issues this Independent Adviser's Report to the Independent Directors for the benefit of the Non-associated Shareholders and to assist them in forming their own opinion on whether to vote for or against the resolution in respect of the Melic Allotment.

We note that each shareholder's circumstances and objectives are unique. Accordingly, it is not possible to report on the merits of the allotment of shares under the Melic Allotment in relation to each shareholder. This report on the merits of the allotment of shares under the Melic Allotment is therefore necessarily general in nature.

The Independent Adviser's Report is not to be used for any other purpose without our prior written consent.

## 2. Evaluation of the Merits of the Melic Allotment

### 2.1 Basis of Evaluation

Rule 18 of the Code requires an evaluation of the merits of the allotment of shares under the Melic Allotment.

There is no legal definition of the term *merits* in New Zealand in either the Code or in any statute dealing with securities or commercial law.

In the absence of an explicit definition of *merits*, guidance can be taken from:

- the Takeover Panel guidance note on the role of independent advisers dated August 2007
- definitions designed to address similar issues within New Zealand regulations which are relevant to the proposed transaction
- overseas precedents
- the ordinary meaning of the term *merits*.

We are of the view that an assessment of the merits of the allotment of shares under the Melic Allotment should focus on:

- the rationale for the Melic Allotment
- the terms and conditions of the Melic Allotment
- the impact of the Melic Allotment on Botry-Zen's net tangible assets (**NTA**)
- the impact of the Melic Allotment on the control of the Company
- the impact of the Melic Allotment on Botry-Zen's share price
- the benefits and disadvantages for the Non-associated Shareholders of the Melic Allotment
- the implications if the resolution in respect of the Melic Allotment is not approved.

Our opinion should be considered as a whole. Selecting portions of the evaluation without considering all the factors and analyses together could create a misleading view of the process underlying the opinion.

## 2.2 Summary of the Evaluation of the Merits of the Melic Allotment

In our opinion, after having regard to all relevant factors, the positive aspects of the Melic Allotment outweigh the negative aspects of the Melic Allotment from the perspective of the Non-associated Shareholders.

Our evaluation of the merits of the Melic Allotment is set out in detail in sections 2.3 to 2.10. In summary, the key factors leading to our opinion are:

- the rationale for the Melic Allotment is sound
- the terms of the Melic Allotment are reasonable. The issue price of \$0.022 per share is in line with the Company's share price over the past year as well as the issue price for two significant share placements in September 2008
- the Melic Allotment will have a positive impact on the Company's NTA
- the Melic Allotment will increase Melic's ability to influence the outcome of shareholding voting as Melic will be able to singlehandedly block special resolutions
- the Melic Allotment is unlikely to increase Melic's ability to exert shareholder control over the Company's board of directors or its operations
- the dilutionary impact of the Melic Allotment on the Non-associated Shareholders' proportionate shareholding in the Company will be in the vicinity of 18%
- the dilutionary impact of the Melic Allotment on the value of the Non-associated Shareholders' shareholdings in the Company will be negligible
- the Melic Allotment is unlikely to have any material impact on Botry-Zen's share price or the liquidity of its shares in the near term
- the Melic Allotment is unlikely to have any material impact on the attraction of Botry-Zen as a takeover target
- the implications of the Melic Allotment not being approved by the Non-associated Shareholders are that unless an alternative source of capital is provided in the near term, then Botry-Zen's directors will likely have to work closely with the Company's bank to manage a sale of the business or appoint a receiver.

## 2.3 Rationale for the Melic Allotment

### **Background**

On 6 August 2008, Botry-Zen announced to the market that it had encountered production difficulties in connection with the manufacture of its *BOTRY-Zen* and *ARMOUR-Zen* products. The Company advised that these problems, if unresolved, would have significant implications for the Company's production targets and cash flow. It advised that the Company's directors and management would be discussing the position with its bank, Bank of New Zealand (**BNZ**).

The Company sought to raise up to \$1.8 million through the private placement of convertible notes and options (the **Convertible Note Issue**). However, the Convertible Note Issue was not approved by shareholders at a special meeting on 15 August 2008. At that point in time, the Company was insolvent as it was overdrawn in excess of its BNZ overdraft facility limit.

The Company announced on 1 September 2008 that a new loan facility had been agreed with BNZ. The loan facility was for \$1.2 million and had a termination date of 30 April 2009. Botry-Zen subsequently announced on 29 May 2009 that BNZ had renewed its commitment to the Company's overdraft facility for a maximum amount of \$1.2 million with a termination date of 30 May 2010.

The Company also announced on 1 September 2008 that it had received \$1.1 million of funding from Melic. The funding was in the form of a loan agreement for \$0.6 million for a term of three years and the issue of 25,000,000 ordinary shares at an issue price of \$0.020 per share, raising \$0.5 million of fresh equity.

The Company announced on 3 September 2008 that it had placed 10,372,807 shares at an issue price of \$0.020 per share with Claus Hartge, raising \$0.2 million of fresh equity. Mr Hartge is a Hamburg-based businessman who is the managing director of Hartge Ingredients GmbH & Co. KG.

### ***Use of Funds***

The issue of 45,454,545 shares through the Melic Allotment will raise \$1.0 million of fresh equity for Botry-Zen (before costs).

The Independent Directors have advised us that the \$1.0 million will be used to fund the Company's working capital requirements. Trading losses are expected to continue until there is sufficient volume of sales to produce gross profits in excess of the Company's operating expenditure. The Independent Directors have advised us that they expect such losses to occur, albeit reducing, for the next two years.

### ***Alternatives to the Melic Allotment***

Botry-Zen could potentially pursue alternative forms of raising capital including:

- seeking debt funding
- undertake a pro rata rights issue
- share placements to other investors.

The Company has recently renegotiated its overdraft facility with BNZ. The Independent Directors have advised us that they do not consider that there is any prospect to increase Botry-Zen's overdraft facility beyond \$1.2 million.

Given the Company's current financial performance and financial position, we do not consider further bank financing at this point in time to be a viable source of funding.

The Independent Directors have advised us that they considered a rights issue but decided against it as the \$1.0 million of funding is required in the very near future and they consider it unlikely that a rights issue would be fully subscribed for in the current economic environment.

We consider it unlikely that any party, other than perhaps a major shareholder, would agree to underwrite a rights issue for the Company at the present time. Therefore, in our opinion, if the Company did undertake a rights issue, there would be a high probability that it would not raise the level of funding that it sought.

The Independent Directors have advised us that the Company has been in discussions with a number of parties in an attempt to raise additional capital to fund its ongoing working capital requirements due to its continuing losses. At this point in time, Melic is the only party that has made a decision to subscribe for additional shares.

We understand that one party had expressed a firm interest in investing \$0.5 million in convertible notes. The proposed terms were a coupon of 12% per annum and a conversion price of \$0.02 per share at any time in the next four years. That party subsequently advised that it did not wish to invest at present, but would likely do so if a rights issue were to take place in the future. We understand that other parties approached by the Company were either unable or unwilling to commit to subscribe for additional shares.

The Independent Directors have advised us that discussions continue with two parties, but there is little prospect of successfully concluding an outcome with either party in the short term.

### ***The Prospects for Botry-Zen without the Melic Allotment***

Without the additional \$1.0 million of funding from the Melic Allotment, the outlook for the Company is poor.

Botry-Zen has had a continuing struggle over a number of years to keep raising capital to fund its trading losses incurred during the development and early trading stages of its life.

The Company has recently renegotiated its bank facility, which terminates in May 2010. The Independent Directors have advised us that given the Company's inability to raise capital from the placement of shares to other existing shareholders or prospective shareholders, then without the \$1.0 million from the Melic Allotment, it is likely that the Company will have to consider selling its business or ask BNZ to appoint a receiver.

### ***Conclusion***

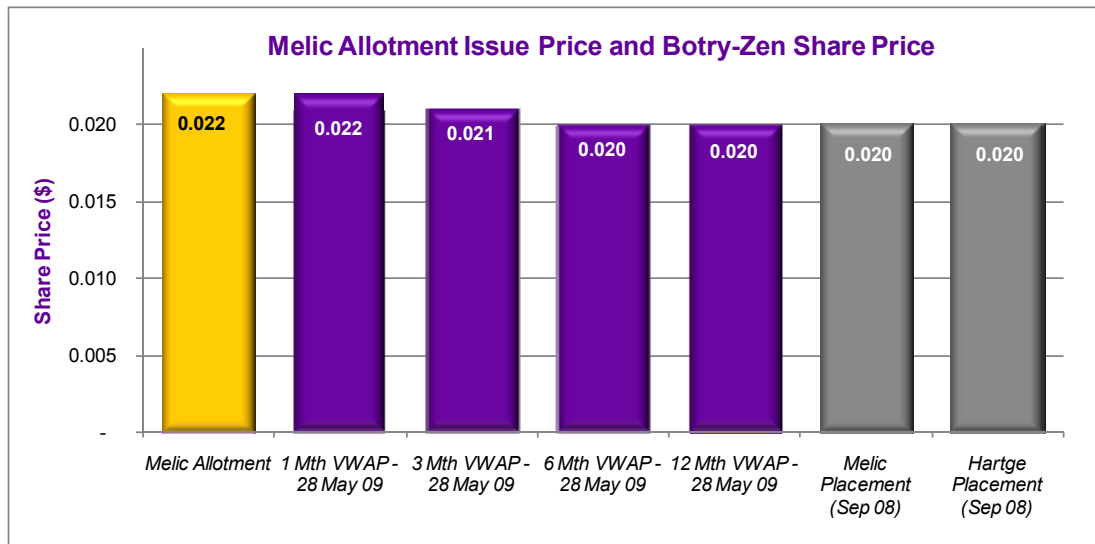
In our view, the rationale for the Melic Allotment is sound. The Company needs to raise capital in a relatively short period of time in order to fund its near term working capital requirements. Botry-Zen's directors have evaluated various capital raising alternatives and have deemed a placement to Melic to be the most expedient alternative available to the Company which provides certainty as to the level of funds raised.

If the Company's need for capital was not so pressing, then we are of the view that an underwritten pro rata rights issue would be a more appropriate form of capital raising from the perspective of the Non-associated Shareholders as it would not have as great a dilutionary impact. However, given the pressing need for capital, we consider the Melic Allotment to be a reasonable capital raising option for Botry-Zen at this point in time.

## 2.4 Terms of the Melic Allotment

The issue price of \$0.022 per share is in line with Botry-Zen's volume weighted average share price (**VWAP**) over the past month, three months, six months and year up to the date of the announcement of the Melic Allotment.

It is marginally higher than the issue price of \$0.020 per share for the share placements to Melic and Claus Hartge in September 2008.



There have been a number of non-pro rata share placements in the New Zealand capital markets in the past few months. These have typically been priced at a discount to pre-announcement share prices, largely reflecting the companies' urgent needs for equity and certainty as to the level of funds that will be raised. The Melic Allotment on the other hand is priced at Botry-Zen's current share price rather than at a discount.

The Melic Allotment shares will be issued as fully paid shares and will rank pari passu with all other shares currently on issue.

We consider the terms and conditions of the Melic Allotment to be reasonable.

## 2.5 Impact on Net Tangible Assets

Botry-Zen's NTA as at 31 March 2009 was \$0.1 million which equated to \$0.0006 per share as at that date.

The Melic Allotment will raise \$1.0 million (before costs). For illustrative purposes, if the proceeds from the Melic Allotment were to have been received on 31 March 2009, Botry-Zen's NTA would increase to \$1.1 million. Illustrative NTA per share would increase by 650% to \$0.0044 per share.

## 2.6 Impact on Control

### **Share Capital and Shareholders**

Botry-Zen currently has 207,456,139 ordinary fully paid shares on issue.

The names, number of shares and percentage holding of the Company's ten largest shareholders as at 12 June 2009 are set out in section 3.9.

### **Shareholder Voting**

Melic currently holds 12.94% of the Company's shares. It is the largest shareholder in Botry-Zen. Melic and its associates collectively hold 13.32% of the Company's shares.

The second largest shareholder is Southern Viticulture Limited (**Southern Viticulture**), holding 6.33% of the shares. Southern Viticulture is associated with Lynwalsh Holdings Limited (**Lynwalsh**) and Essex Castle Limited (**Essex Castle**). Collectively, Southern Viticulture, Lynwalsh and Essex Castle hold 10.89% of the Company's shares.

The ten largest shareholders collectively hold 42.79% of the shares.

The Melic Allotment will result in Melic holding 28.59% of the Company's shares and Melic and its associates collectively holding 28.90% of the Company's shares.

Melic currently has limited ability to influence the outcome of shareholder voting. Its 12.94% shareholding cannot block special resolutions (which require the approval of 75% of the votes cast by shareholders) or ordinary resolutions (which require the approval of more than 50% of the votes cast by shareholders).

The Melic Allotment will result in Melic having the ability to block special resolutions.

Under the Companies Act 1993 (the **Act**), a special resolution is required to:

- adopt, alter or revoke a company's constitution
- approve a major transaction
- approve an amalgamation of a company
- place a company in liquidation.

The Melic Allotment will not result in Melic having the ability to singlehandedly pass or block ordinary resolutions.

The ability for any shareholder to influence the Company's ordinary resolutions or special resolutions may be reduced by external factors such as the Company's constitution, the NZAX Listing Rules and the Act.

Given the above, we are of the view that the allotment of shares to Melic under the Melic Allotment will increase Melic's ability to exert shareholder control over Botry-Zen as Melic will be able to singlehandedly block special resolutions.

### **Board Control**

As stated in section 3.8, the Company has four directors, two of whom are deemed to be associates of Melic - Michael Mellon and Tim Dunn.

Mr Mellon and Mr Dunn were appointed directors on 8 September 2008. Both will retire and be eligible for re-election at the Company's annual meeting on 24 July 2009.

We are advised that Melic has no intention of seeking additional representation on the board as a result of its increased shareholding through the Melic Allotment. The Company's constitution does not provide for Melic to have any directors as a right.

## Operations

We are advised by the Independent Directors that Melic currently does not have any influence over the operations of the Company other than through its board representation and that any increase in its shareholding will have no discernible impact on the Company's operations.

## 2.7 Dilutionary Impact

### Shareholding Levels

The Melic Allotment will result in the Non-associated Shareholders' proportionate shareholdings in the Company being diluted by 18%.

Dilutionary Impact of the Melic Allotment on the Non-associated Shareholders			
	No. of Shares		
	Current	Allotment	Post Allotment
Melic	26,841,500	45,454,545	72,296,045
Kelvin Coe	500,000	-	500,000
Maureen Hore	300,000	-	300,000
Melic and associates	27,641,500	45,454,545	73,096,045
Non-associated Shareholders	179,814,639	-	179,814,639
Total	207,456,139	45,454,545	252,910,684
Dilutionary impact			18.0%

By way of example, a Non-associated Shareholder holding 1,000,000 shares currently holds a 0.48% interest in the Company. This interest will be diluted by 18% down to 0.40% following the Melic Allotment.

### Shareholder Value

Given that the Melic Allotment issue price of \$0.022 per share is in line with the Company's current share price, the value of the Non-associated Shareholders' investment in the Company is unlikely to be diluted.

In other words, the issue price of \$0.022 per share should ensure that there is no material value transfer from the Non-associated Shareholders to Melic. Ultimately, the question of any value transfer is likely to be of greater importance to the holders of small minority parcels than the dilution in their proportionate voting interest.

We do not consider the dilutionary impact of the Melic Allotment to be a significant negative aspect for Non-associated Shareholders.

## 2.8 Impact on Share Price and Liquidity

### Share Price

Details of the Melic Allotment were announced on 29 May 2009. Its closing share price on 28 May 2009 was \$0.025. Since then, 205,000 shares have traded at a VWAP of \$0.025.

We are of the view that the Melic Allotment is unlikely to have a material effect (either positive or negative) on the Company's share price in the near term as the issue price is in line with the current share price.

### ***Liquidity***

The average volume of shares traded each month since 3 January 2008 has been approximately 0.5% of the shares on issue.

The size of the pool of shares held by the Non-associated Shareholders will not change as a result of the Melic Allotment.

In our view, the Melic Allotment in itself is unlikely to have a positive or negative effect on the liquidity of Botry-Zen's shares.

## **2.9 Benefits and Disadvantages to the Non-associated Shareholders**

### ***Key Benefits***

The key benefit to the Non-associated Shareholders of the Melic Allotment is that the Company is certain to obtain the funds it requires with relatively low transaction costs.

In addition, Melic will enhance its position as an important cornerstone investor in the Company. Melic recently acquired its 12.94% shareholding in the Company and has provided \$1.07 million of debt funding to Botry-Zen.

The Melic Allotment also further signals Melic's confidence in the future prospects of Botry-Zen.

### ***Non-associated Shareholder Approval is Required***

Pursuant to Rule 7(d) of the Code, the Non-associated Shareholders must approve by ordinary resolution the Melic Allotment.

The Melic Allotment will not proceed unless the Non-associated Shareholders approve the resolution.

### ***Main Disadvantage***

The main disadvantage is that the Melic Allotment will increase Melic's shareholding in Botry-Zen from 12.94% to 28.59%, (or, when combined with its associates, from 13.32% to 28.90%), which will result in the Non-associated Shareholders' shareholdings being diluted by 18%.

### ***Likelihood of a Takeover Offer from Melic Unlikely to Change***

As long as Melic holds more than 20% and not more than 50% of the voting rights in the Company, it cannot increase the level of its shareholding unless it complies with the provisions of the Code. It will only be able to acquire more shares in the Company if:

- it makes a full or partial takeover offer or
- the acquisition is approved by way of an ordinary resolution of the Non-associated Shareholders or
- the Company makes an allotment of shares which is approved by way of an ordinary resolution of the Non-associated Shareholders.

Melic is seeking to increase its shareholding from 12.94% to 28.59% by way of shareholder approval. Assuming the Melic Allotment is approved, Melic will not be able to increase its shareholding beyond 28.59% unless it complies with the provisions of the Code.

In our view, an increase in Melic's shareholdings from 12.94% to 28.59% is unlikely to reduce the likelihood of a takeover offer for the Company from Melic. A shareholder seeking a high level of control over a company is unlikely to consider a 28.59% shareholding to provide a sufficient level of control.

### ***Likelihood of Other Takeover Offers does not Change***

Any bidder looking to fully take over the Company would need to ensure that Melic would accept its offer, irrespective of whether it held 12.94% or 28.59% of the shares in the Company.

In the event that a bidder made a partial takeover offer for (say) 50.1% of the Company, the increase in Melic's voting rights to 28.59% would still be insufficient to prevent a successful partial takeover at that level of control.

In our view, the increase in Melic's shareholdings from 12.94% to 28.59% will not have a material impact on the attraction of Botry-Zen as a takeover target to other parties.

### ***Benefits Outweigh Disadvantages***

Given the Company's financial position and its prospects without the additional capital, we are of the view that the benefits of the Melic Allotment outweigh the disadvantages.

## **2.10 Implications of the Resolution not Being Approved**

In the event that the resolution is not approved, then the Melic Allotment cannot proceed.

As stated in section 2.3, without the Melic Allotment, the Company's prospects are poor. Unless one or several of the other parties with whom Botry-Zen is discussing a share placement is willing to commit to provide capital in the near term, then the Company's directors will likely have to work closely with BNZ to manage a sale of the business or appoint a receiver.

## **2.11 Voting For or Against the Resolution**

Voting for or against the resolution in respect of the Melic Allotment is a matter for individual shareholders based on their own views as to value and future market conditions, risk profile and other factors. Shareholders will need to consider these consequences and consult their own professional adviser if appropriate.

### 3. Profile of Botry-Zen

#### 3.1 Background

Botry-Zen was incorporated on 4 April 2001. It issued 50,000,000 ordinary shares in August 2001, raising \$5 million.

The Company's shares were initially listed on NZX's main board equity security market (**NZSX**) on 20 November 2002. The Company transferred its listing from the NZSX to the NZAX on 15 December 2008.

#### 3.2 Nature of Operations

Botry-Zen was formed in 2001 to pursue the commercialisation of biological control agents. The Company owns an exclusive licence to technology giving the ability to produce, distribute and sell the product *BOTRY-Zen* for the biological control of plant diseases caused by *Botrytis* fungus infections. The technology was developed through co-operative efforts of The Horticulture and Food Research Institute of New Zealand Limited, Winegrape Tech (a joint venture between Winegrowers of NZ Limited and New Zealand Grape Growers Limited) and Zenith Technology Corporation Limited. Bio-Gro NZ (the New Zealand approval authority) has accredited *BOTRY-Zen* for use in organic production.

The Company has developed a second product, *ARMOUR-Zen*, which provides late season protection to ripening berries and is a companion botryticide to compliment the early season *Botrytis* control action / benefit of *BOTRY-Zen*.

#### 3.3 Business Strategy

The Company now has two effective products in the market, which have been successfully marketed in New Zealand.

Having now secured necessary registration approvals, Botry-Zen has launched the products into the German market and is pursuing regulatory approval for *BOTRY-Zen* in the USA.

#### 3.4 Key Issues Affecting Botry-Zen

The main industry and specific business factors and risks that Botry-Zen faces include:

- its ability to raise sufficient capital to fund ongoing costs of developing and operating its business
- its ability to expand its production to meet market demands
- changes in economic conditions, particularly in the key markets that it focuses on (New Zealand and Germany)
- significant changes in international weather patterns that lead growers to reduce applications of disease controlling solutions
- changes in the regulatory environment in respect of the production and sale of *BOTRY-Zen* and *ARMOUR-Zen*
- competition from other manufacturers of chemical and biological products to control plant diseases

- the protection of its intellectual property
- the outcome of further scientific investigations in respect of the efficacy of *BOTRY-Zen* and *ARMOUR-Zen*
- final regulatory approval of *BOTRY-Zen* in California.

### 3.5 Financial Performance

A summary of Botry-Zen's recent financial performance is set out below.

Summary of Botry-Zen Financial Performance				
	Year to 31 Mar 06 (Audited) \$000	Year to 31 Mar 07 (Audited) \$000	Year to 31 Mar 08 (Audited) \$000	Year to 31 Mar 09 (Audited) \$000
Operating revenue	277	122	576	594
Operating expenses	<u>(1,856)</u>	<u>(1,790)</u>	<u>(1,797)</u>	<u>(2,284)</u>
Net surplus / (deficit) before taxation	(1,579)	(1,668)	(1,221)	(1,690)
Taxation	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net surplus / (deficit) after taxation	<u>(1,579)</u>	<u>(1,668)</u>	<u>(1,221)</u>	<u>(1,690)</u>

*Source: Botry-Zen audited financial statements*

Botry-Zen has recorded operating losses since it listed on the NZSX.

The Company's operating revenue consists mainly of the sale of *BOTRY-Zen* and *ARMOUR-Zen* products and interest received.

Operating expenses consist mainly of research and development costs, employee costs, distribution expenses, occupancy costs, depreciation and financing costs.

The increase in operating revenue in the 2008 financial year was due to significant increases in sales volumes of the *BOTRY-Zen* and *ARMOUR-Zen* products due to the wide adoption of the products by the New Zealand wine industry into its Sustainable Grape Growing Program. Also included in 2008 revenue was grant income of \$0.2 million.

Sales of products increased from \$0.3 million in the 2008 financial year to \$0.6 million in the 2009 financial year. Production difficulties in the first half of the year, stock write-downs and costs in respect of the Convertible Note Issue and bank charges contributed to the \$1.7 million loss in the 2009 financial year.

### 3.6 Financial Position

A summary of Botry-Zen's recent financial position is set out below.

Summary of Botry-Zen Financial Position				
	As at 31 Mar 06 (Audited) \$000	As at 31 Mar 07 (Audited) \$000	As at 31 Mar 08 (Audited) \$000	As at 31 Mar 09 (Audited) \$000
Current assets	2,824	226	247	508
Non current assets	660	2,342	2,188	1,927
Total assets	<u>3,484</u>	<u>2,568</u>	<u>2,435</u>	<u>2,435</u>
Current liabilities	(144)	(896)	(1,285)	(1,341)
Non current liabilities	-	-	-	(950)
Total liabilities	<u>(144)</u>	<u>(896)</u>	<u>(1,285)</u>	<u>(2,291)</u>
Total equity	<u>3,340</u>	<u>1,672</u>	<u>1,150</u>	<u>144</u>

Source: Botry-Zen audited financial statements

Botry-Zen's main current assets are inventory, along with accounts receivables and prepayments. Its non current assets consist mainly of plant and machinery and leasehold improvements. Current liabilities consist mainly of a bank overdraft and accounts payable and non current liabilities consist of a loan.

The bank overdraft amounted to \$1.0 million as at 31 March 2009 and the Company had a term loan of \$0.95 million from Melic at that date.

As at 26 June 2009, loans from Melic totalled \$1.48 million, of which \$405,000 was drawn down on 29 May 2009 and is to be repaid by the issue of shares pursuant to the Melic Allotment.

### 3.7 Cash Flows

A summary of Botry-Zen's recent cash flows is set out below.

Summary of Botry-Zen Cash Flows				
	Year to 31 Mar 06 (Audited) \$000	Year to 31 Mar 07 (Audited) \$000	Year to 31 Mar 08 (Audited) \$000	Year to 31 Mar 09 (Audited) \$000
Net cash flow from / (used in) operating activities	(1,803)	(1,357)	(1,005)	(1,619)
Net cash from / (used in) investing activities	(360)	(1,841)	(134)	(56)
Net cash from / (used in) financing activities	<u>3,910</u>	<u>1</u>	<u>733</u>	<u>1,628</u>
Net increase/(decrease) in cash held	1,747	(3,197)	(406)	(47)
Opening cash balance	741	2,619	(578)	(984)
Effect of exchange rate fluctuations	131	0	0	0
Closing cash balance	<u>2,619</u>	<u>(578)</u>	<u>(984)</u>	<u>(1,031)</u>

Source: Botry-Zen audited financial statements

Botry-Zen's negative operating cash flows reflect its operating losses each year.

\$1.9 million was invested in plant and machinery and leasehold improvements in the 2007 financial year.

The Company completed a rights issue in October 2005, raising \$3.9 million to fund the expansion of its Dunedin plant and launch off-shore field trials and registration of *BOTRY-Zen* in the USA and Europe.

The Company raised \$0.7 million in May 2007 through share placements.

\$0.7 million was raised in September 2008 through share placements (\$0.5 million from Melic and \$0.2 million from Claus Hartge) and \$0.95 million of term loans were received from Melic between August 2008 and March 2009.

### 3.8 Directors

The directors of Botry-Zen are:

- Stephen Higgs, chairman (independent director)
- John Forrest (independent director)
- Michael Mellon (associated with Melic)
- Tim Dunn (associated with Melic).

### 3.9 Capital Structure and Shareholders

#### Ordinary Shares

Botry-Zen currently has 207,456,139 ordinary shares on issue.

The names, number of shares and percentage holding of the ten largest shareholders as at 12 June 2009 are set out below.

Botry-Zen's Ten Largest Shareholders		
Shareholder	No. of Shares Held	%
Melic	26,841,500	12.94%
Southern Viticulture	13,134,642	6.33%
Max Shepherd & Downie Stewart Trustee Limited	11,562,879	5.57%
Lynwalsh	7,953,482	3.83%
Biotechnica Consultants Limited	5,731,664	2.76%
Claus Hartge	5,186,404	2.50%
Margarita Hartge	5,186,403	2.50%
Lee Paterson Trust Company Limited	4,886,570	2.36%
Cheung-Tak Hung & Downie Stewart Trustee Limited	4,577,853	2.21%
John Paterson	3,718,617	1.79%
Subtotal	88,780,014	42.79%
Others (1,412 shareholders)	118,676,125	57.21%
Total	207,456,139	100.00%

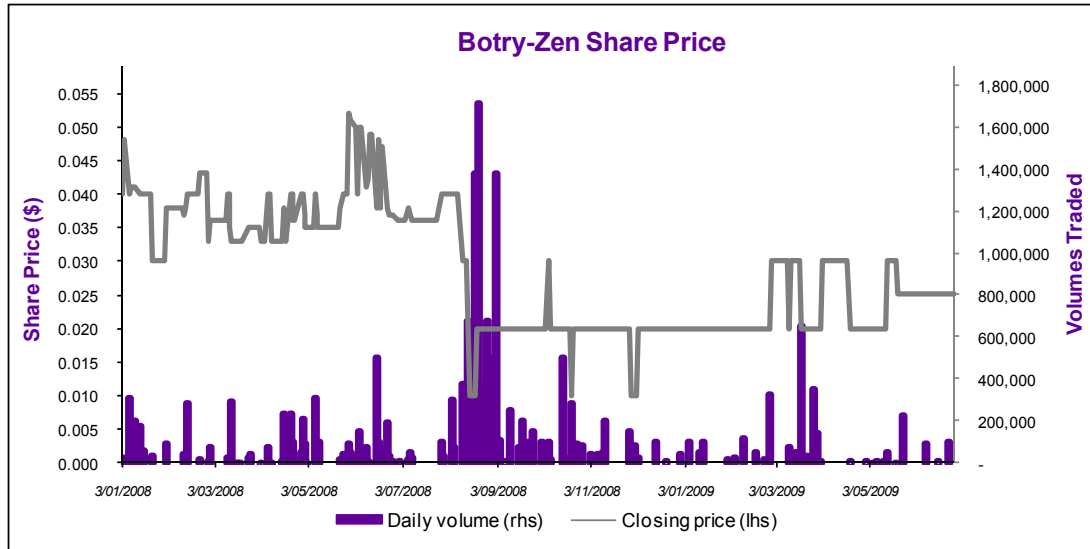
*Source: NZX Data*

Melic acquired 25,000,000 shares on 1 September 2008 via a private placement. It has increased its shareholding by a further 1,841,500 shares via on-market purchases since then.

Claus and Margarita Hartge acquired 10,372,807 shares on 19 September 2008 via a private placement.

### 3.10 Share Price History

Set out below is a summary of Botry-Zen’s daily closing share price and daily volumes of shares traded from 3 January 2008 to 26 June 2009.



Botry-Zen’s shares have traded between \$0.010 and \$0.052 since 3 January 2008. The Company’s VWAP up to 26 June 2009 was:

- one month – \$0.025
- three months - \$0.022
- six months - \$0.021
- one year - \$0.018.

Trading in the Company’s shares is extremely thin. The average volume of shares traded each month since 3 January 2008 represented approximately 0.5% of the total shares on issue.

## **4. Sources of Information, Reliance on Information, Disclaimer and Indemnity**

### **4.1 Sources of Information**

The statements and opinions expressed in this report are based on the following main sources of information:

- the draft notice of special meeting
- the Share Subscription Agreement dated 29 May 2009
- the Botry-Zen annual reports for the years ended 31 March, 2005 to 2009
- the Botry-Zen interim report for the six months to 30 September 2008
- share price data and shareholder data in respect of Botry-Zen from NZX Data and Capital IQ.

During the course of preparing this report, we have had discussions with and/or received information from the Independent Directors and executive management of Botry-Zen and Botry-Zen's legal advisers.

The Independent Directors have confirmed that we have been provided for the purpose of this Independent Adviser's Report with all information relevant to the Melic Allotment that is known to them and that all the information is true and accurate in all material aspects and is not misleading by reason of omission or otherwise.

Including this confirmation, we have obtained all the information that we believe is desirable for the purpose of preparing this Independent Adviser's Report.

In our opinion, the information to be provided by Botry-Zen to the Non-associated Shareholders is sufficient to enable the Independent Directors and the Non-associated Shareholders to understand all the relevant factors and to make an informed decision in respect of the Melic Allotment.

### **4.2 Reliance on Information**

In preparing this report we have relied upon and assumed, without independent verification, the accuracy and completeness of all information that was available from public sources and all information that was furnished to us by Botry-Zen and its advisers.

We have evaluated that information through analysis, enquiry and examination for the purposes of preparing this report but we have not verified the accuracy or completeness of any such information or conducted an appraisal of any assets. We have not carried out any form of due diligence or audit on the accounting or other records of Botry-Zen. We do not warrant that our enquiries would reveal any matter which an audit, due diligence review or extensive examination might disclose.

### **4.3 Disclaimer**

We have prepared this report with care and diligence and the statements in the report are given in good faith and in the belief, on reasonable grounds, that such statements are not false or misleading. However, in no way do we guarantee or otherwise warrant that any forecasts of future profits, cash flows or financial position of Botry-Zen will be achieved. Forecasts are inherently uncertain. They are predictions of future events that cannot be assured. They are based upon assumptions, many of which are beyond the control of Botry-Zen and its directors and management. Actual results will vary from the forecasts and these variations may be significantly more or less favourable.

We assume no responsibility arising in any way whatsoever for errors or omissions (including responsibility to any person for negligence) for the preparation of the report to the extent that such errors or omissions result from our reasonable reliance on information provided by others or assumptions disclosed in the report or assumptions reasonably taken as implicit.

Our evaluation has been arrived at based on economic, exchange rate, market and other conditions prevailing at the date of this report. Such conditions may change significantly over relatively short periods of time. We have no obligation or undertaking to advise any person of any change in circumstances which comes to our attention after the date of this report or to review, revise or update our report.

We have had no involvement in the preparation of the notice of meeting issued by Botry-Zen and have not verified or approved the contents of the notice of meeting. We do not accept any responsibility for the contents of the notice of meeting except for this report.

### **4.4 Indemnity**

Botry-Zen has agreed that, to the extent permitted by law, it will indemnify Simmons Corporate Finance and its directors and employees in respect of any liability suffered or incurred as a result of or in connection with the preparation of the report. This indemnity does not apply in respect of any negligence, wilful misconduct or breach of law. Botry-Zen has also agreed to indemnify Simmons Corporate Finance and its directors and employees for time incurred and any costs in relation to any inquiry or proceeding initiated by any person. Where Simmons Corporate Finance or its directors and employees are found liable for or guilty of negligence, wilful misconduct or breach of law or term of reference, Simmons Corporate Finance shall reimburse such costs.

## **5. Qualifications and Expertise, Independence, Declarations and Consents**

### **5.1 Qualifications and Expertise**

Simmons Corporate Finance is a New Zealand owned specialist corporate finance advisory practice. It advises on mergers and acquisitions, prepares independent expert's reports and provides valuation advice.

The person in the company responsible for issuing this report is Peter Simmons, B.Com, DipBus (Finance), CFIP.

Simmons Corporate Finance and Mr Simmons have significant experience in the independent investigation of transactions and issuing opinions on the merits and fairness of the terms and financial conditions of the transactions.

### **5.2 Independence**

Simmons Corporate Finance does not have at the date of this report, and has not had, any shareholding in or other relationship with Botry-Zen or Melic or any conflict of interest that could affect our ability to provide an unbiased report in respect of this transaction.

Simmons Corporate Finance has not had any part in the formulation of the Melic Allotment or any aspects thereof. Our sole involvement has been the preparation of this report.

Simmons Corporate Finance will receive a fixed fee for the preparation of this report. This fee is not contingent on the conclusions of this report or the outcome of the Melic Allotment. We will receive no other benefit from the preparation of this report.

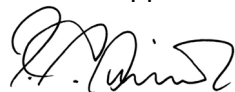
### **5.3 Declarations**

An advance draft of this report was provided to the Independent Directors for their comments as to factual accuracy, as opposed to opinions, which are the responsibility of Simmons Corporate Finance alone. Changes made to the report as a result of the circulation of the draft have not changed the methodology or our conclusions.

Our terms of reference for this engagement did not contain any term which materially restricted the scope of the report.

### **5.4 Consents**

We consent to the issuing of this report in the form and context in which it is to be included in the notice of meeting to be sent to Botry-Zen's shareholders. Neither the whole nor any part of this report, nor any reference thereto may be included in any other document without our prior written consent as to the form and context in which it appears.



Peter Simmons  
Director

**Simmons Corporate Finance Limited**  
29 June 2009