

**Botry-Zen Limited**

**Independent Adviser's  
and Appraisal Report  
on the Proposed Rights Issue  
by Botry-Zen Limited**

**to the Independent Directors  
of Botry-Zen Limited**

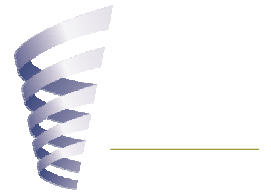
**5 October 2005**

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## 1.0 Introduction

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- 1.1 In this report Botry-Zen Limited is referred to as “Botry-Zen” or the “Company” and the Company’s product is referred to as “BOTRY-Zen”.
- 1.2 McCallum Petterson has been requested to prepare an Independent Adviser’s Report under Rule 18 of The Takeovers Code (the “Code”). Rule 18 of the Code requires directors of a Code company to obtain a report from an independent adviser on the merits of any proposed allotment under rule 7(d) of the Code. Rule 7(d) of the Code addresses the situation where a code company makes an allotment of sufficient shares to an allottee, such allotment giving the allottee control of more than 20% of the voting rights in the code company or giving the allottee an increased percentage of control if the allottee already held more than 20%.
- 1.3 McCallum Petterson has also been requested to prepare an Appraisal Report required under Rules 6.2.2 and 9.2.5 of the NZSX Listing Rules. Rule 6.2.2 requires the directors of an NZSX listed company to obtain an independent appraisal report for shareholders if, amongst other things, in the case of an issue of shares, there is a significant likelihood that the issue will result in any person or group of associated persons materially increasing their ability to exercise effective control, or, in the case of an acquisition of shares, it is intended or likely that more than 50% of the securities to be acquired will be securities held by directors or associated persons of directors of the issuer.
- 1.4 The Principal Shareholders that are taking part in the Share Cancellation are:
- F** Otago Trustee Company Limited
  - F** Pine Hill Trust through its trustees C T Hung and Downie Stewart Trustee Limited, whose interest is held through Polson Higgs Nominees Limited
  - F** Rutherglen Trust through its trustees M G Shepherd and Downie Stewart Trustee Limited, whose interest is held through Polson Higgs Nominees Limited



1.5 The Underwriters of the Rights Issue are:

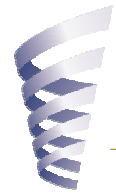
- F** T D Scott No 2 Family Trust through its trustees: T D Scott, D H Wale, and C J Swann
- F** PKHB Holdings Limited
- F** Southern Viticulture Limited
- F** Aspiring Asset Management Limited
- F** De Tourettes Holdings Limited
- F** John McDonald Paterson
- F** David John Smallbone  
together the “Underwriters”.

1.6 Other shareholders who are associated with these parties are:

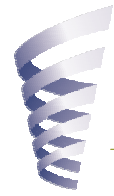
**TABLE A: Associated parties**

<b>Party</b>	<b>Associates</b>
Max Shepherd	Rutherglen Trust Biotechnica Consultants Limited
Cheung Tak Hung	Pine Hill Trust Biotechnica Consultants Limited Zenith Technology Corporation Limited
Otago Trustee Company Limited	Jagged Peak Investments Limited Three River Holdings Limited
David Smallbone	SFT Investments Limited Akanaw Investments Limited Tarlogie Investments Limited Otago Trustee Company Limited Alluvial Holdings Limited Jagged Peak Investments Limited Three River Holdings Limited Kathryn Smallbone
T D Scott No 2 Family Trust	N/a
PKHB Holdings Limited	N/a
Southern Viticulture Limited	N/a
Aspiring Asset Management Limited	N/a
De Tourettes Holdings Limited	N/a
John Paterson	N/a

1.7 We note David Smallbone is a director of Hirequip New Zealand Limited, the holding company of Southern Viticulture Limited (a current shareholder in the Company and one of the Underwriters).



- 1.8 We note Murray Doyle is a director of Hirequip New Zealand Limited, Southern Viticulture Limited (a current shareholder in the Company and one of the Underwriters) and Aspiring Asset Management Limited (another of the Underwriters).
- 1.9 Additionally, the question of whether the Code applies to the allotment of voting securities to Underwriters turns on whether the Underwriters are acting “jointly or in concert” by participating in the underwriting arrangements. The Company and the Underwriters have agreed to seek shareholder approval for the allotment of shares to the Underwriters against the possibility that a person considers the Underwriters to be acting “in concert”.



## 2.0 The Transaction

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- 2.1 There are two parts to the Capital Raising and Restructuring Transaction Proposal.
- 2.2 The first part is the cancellation of 90,000,000 shares. Subject to Shareholder approval, Botry-Zen will offer to acquire 30,000,000 shares from each of its three Principal Shareholders for \$1.00 per shareholder and immediately cancel these shares. This will reduce the number of shares on issue from 166,666,666 shares to 76,666,666 shares (the “Share Cancellation”).
- 2.3 The second part is a partially underwritten renounceable Rights Issue to all shareholders that will result in 76,666,666 further shares being issued at an issue price of 5.5 cents per share. These new shares will have the same rights and terms as any existing shares.
- 2.4 The Share Cancellation and the Rights Issue are each dependent on the other proceeding.
- 2.5 Through the prior commitment of the Principal Shareholders (16,338,613 shares) and the underwriting arrangements (60,328,053 shares) the Rights Issue will be fully taken up even if no other shareholder exercises their rights.
- 2.6 For the purposes of this Report, the Share Cancellation and the underwritten Rights Issue are referred to as the “Transaction”.



### **3.0 The Purpose of the Report**

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- 3.1 An Independent Adviser's Report required under Rule 18 of the Code is to accompany the Notice of Special Meeting for the meeting that is to be held on 21 October 2005 (the "Meeting") to vote on the Transaction proposal. McCallum Petterson consents to the distribution of this Report for that purpose and understands that it may be used by the shareholders who are entitled to vote on the resolution at the Meeting.
- 3.2 Further under Rules 6.2.2 and 9.2.5 of the NZSX Listing Rules an Appraisal Report is also required to accompany the Notice of Special Meeting. Again, McCallum Petterson consents to the distribution of this Report for that purpose and understands it may be used by the shareholders who are entitled to vote on the resolution at the Meeting.
- 3.3 An Independent Adviser's Report is to provide an assessment of the merits of the Transaction. There is no prescribed meaning of "merits". However, the Code is concerned to ensure that the shareholders who are entitled to vote on the proposal are fully informed of their protections and rights under the Code and have the effect of the Transaction fully explained to them including the potential outcome if the Transaction does not proceed and the status quo continues.
- 3.4 An Appraisal Report is to express an opinion as to whether the consideration and terms and conditions of the Transaction are fair to the shareholders not associated with the relevant Associated Persons.



## **4.0 The Effect on Share Holdings of the Transaction**

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### **4.1 Part One: The Share Cancellation.**

4.1.1 The Share Cancellation will result in the three Principal Shareholders reducing their individual holdings to below 20% and on a combined basis they move from a current level of 64.7% to 23.2% (before the Rights Issue is taken into account).

4.1.2 The Share Cancellation reduces the equity capital of the Company by three dollars (\$3.00). The market capitalisation of the Company on the day prior to the announcement of the Share Cancellation, 11 August 2005, was \$10.7 million, (166,666,666 shares at a last sale price of \$0.064). Assuming no change in value then the increase in the per share value should be 7.5 cents taking the theoretical share price to \$0.139 per share. This increase in value is of benefit to the non Principal Shareholders without any diminution in the capital strength of Botry-Zen.

### **4.2 Part Two: The Rights Issue.**

4.2.1 The Rights Issue is being offered to all shareholders on the same terms and conditions and the new shares will have the same terms and conditions as the existing shares. The Rights Issue will substantially increase the capitalisation of the Company by \$4.2 million. It will provide considerable cash reserves for the Company that should be sufficient to see the Company complete the remaining research and development and the scale up of its operations to a sustainable point of positive cash generation through its trading operations. The success of the Rights Issue is therefore of considerable importance to the ultimate success of the Company and therefore its shareholders.



4.2.2 The key terms of the Rights Issue to be partially underwritten are as follows:

Maximum Number of New Shares:	76,666,666
Ratio of Entitlements:	1 : 1
Issue Price per New Share	5.5 cents
Maximum Amount of New Capital to be Raised:	\$4,216,667
Purpose of Issue:	See Below
Record Date for determining Entitlements:	Tuesday, 25 October 2005
Ranking:	New Shares will rank the same as Existing Shares
Rights Trading Period:	26 October to 21 November 2005
Last Date for Receipt of Applications:	Wednesday, 23 November 2005
Renounceable:	Yes

4.2.3 The Rights will be tradable on the market and as such those shareholders who do not intend to take up their Rights may be able to realise value for them. Should an individual shareholder not take up their Rights then their interest in Botry-Zen will not change substantially from their position prior to the Transaction. The current number of shares issued by the Company is 166,666,666. This will change to 153,333,332 after the Share Cancellation and Rights Issue. This is a reduction of 8% in the total number of shares issued. We estimate that the Rights will have a market value of approximately 4.2 cents per Rights excluding any adjustment for interest or other financing costs, which in itself on a per share basis would be less than 0.1 cents per month. This estimate is calculated as follows:

		Number of Shares	Price (cents per share)	Market Capitalisation*
Market capitalisation prior to transactions	A	166,666,666	6.4	10,666,666
Market capitalisation post cancellation	B	76,666,666	13.9	10,666,666
Add market capitalisation of rights issue	C	76,666,666	5.5	4,216,667
Market capitalisation post rights issue	D=B+C	153,333,333	9.7	14,883,333
Estimated value of Rights	D-C		4.2	

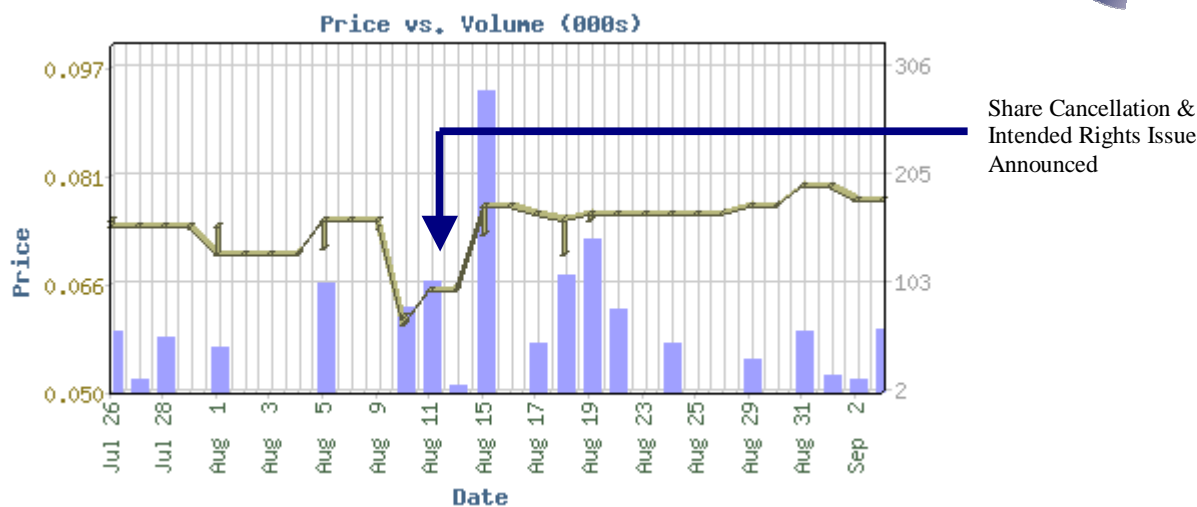
\* Number of shares x price = market capitalisation



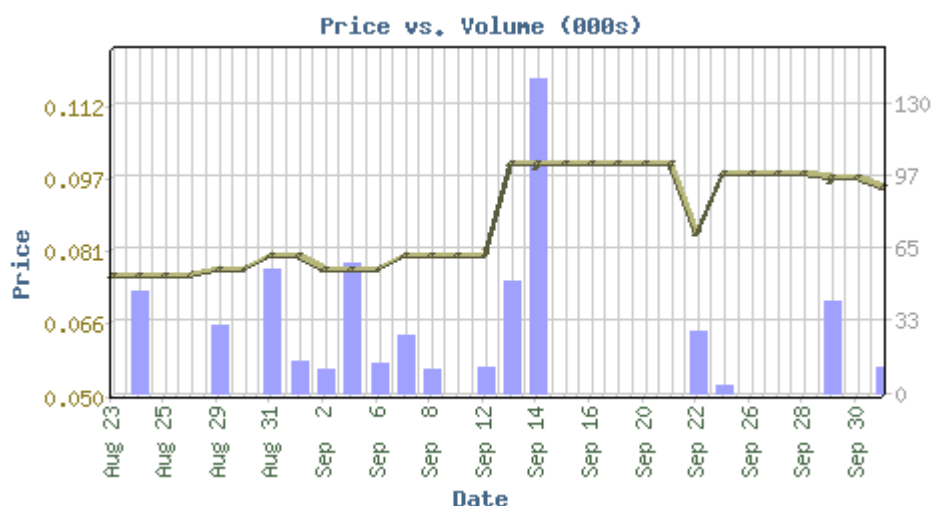
- 4.2.4 As a result of the Cancellation and Rights Issue the interest of a shareholder therefore who does not exercise their Rights will increase by 8.7%. For example a shareholder who owns 10,000,000 shares prior to the Cancellation and Rights Issue has an interest of 6.00% ( $10,000,000/166,666,666$ ). If that shareholder did not take the Rights Issue then their interest would become 6.52% ( $10,000,000/153,333,333$ ), a percentage increase in their interest of 8.7%.
- 4.2.5 The interest of a shareholder who does exercise their rights (by the payment of 5.5 cents per share) will increase by 117.4%. For example a shareholder who owns 10,000,000 shares prior to the Cancellation and Rights Issue has an interest of 6.00%. If that shareholder did take the Rights Issue and became the holder of 20,000,000 shares then their interest would increase to 13.04% ( $20,000,000/153,333,333$ ), a percentage increase in their interest of 117.4%.
- 4.2.6 By way of further example the value to the holder of 10,000,000 shares was \$640,000. After the Share Cancellation but before the Rights Issue the holdings should be valued at \$1,390,000. After both the Share Cancellation and the Rights Issue the holder will have a holding of 20,000,000 shares with a value of \$1,940,000 on the basis that they exercise the Rights, but would have outlaid \$550,000 on the exercise of the Rights. If they chose not to exercise their Rights then they would have a holding of 10,000,000 shares with a value of \$970,000, plus cash from the sale of their Rights of \$420,000, a total of \$1,390,000.



4.2.7 The recent trading of Botry-Zen shares is shown in Graphs A & B:



GRAPH A: (Source NZX 5 September 2005)



GRAPH B: (Source NZX 4 October 2005)

4.3 The following table (Table B) discloses a summary of the shareholders in Botry-Zen. It also discloses the position where the Share Cancellation takes place and the Rights Issue proceeds. Two scenarios are disclosed with regard to the Transaction, one is where the underwriters are only required to take up a limited number of shares not subscribed for by the Principal Shareholders and all other existing shareholders exercise their Rights in full. The other is where the Underwriters are fully called upon to take up their allotments.



**TABLE B: Changes in Shareholding after the Share Cancellation and Rights Issue**

Shareholder	Existing		After Cancellation		After Rights Issue Full Acceptance*		After Rights Issue Underwrite fully called**	
	Number of Shares	%	Number of Shares	%	Number of Shares	%	Number of Shares	%
Otago Trustee Company Limited	35,429,523	21.26	5,429,523	7.08	10,859,046	7.08	10,859,046	7.08
Pine Hill Trust	36,383,334	21.83	6,383,334	8.33	11,837,879	7.72	11,837,879	7.72
Rutherglen Trust	36,010,102	21.61	6,010,102	7.84	11,464,647	7.48	11,464,647	7.48
T D Scott	0				201,310	0.13	8,181,818	5.34
PKHB Holdings	70,500	0.04	70,500	0.09	252,839	0.16	4,615,955	3.01
Southern Viticulture	4,040,281	2.42	4,040,281	5.27	8,348,976	5.44	14,949,372	9.75
Aspiring Asset Management	0				433,060	0.28	17,600,780	11.48
De Tourettes	0				178,942	0.12	7,272,727	4.74
John Paterson	0				178,942	0.12	7,272,727	4.74
David Smallbone	0				111,839	0.07	4,545,455	2.96
Other Shareholders	54,732,926	32.84	54,732,926	71.39	109,465,852	71.39	54,732,926	35.70
<b>TOTAL</b>	<b>166,666,666</b>	<b>100.00</b>	<b>76,666,666</b>	<b>100.00</b>	<b>153,333,332</b>	<b>100.00</b>	<b>153,333,332</b>	<b>100.00</b>

The combined positions for all the Principal Shareholders, all the Underwriters and all other shareholders are:

**TABLE C: Changes in Shareholding after the Share Cancellation and Rights Issue**

Shareholder	Existing		After Cancellation		After Rights Issue Full Acceptance*		After Rights Issue Underwrite fully called**	
	Number of Shares	%	Number of Shares	%	Number of Shares	%	Number of Shares	%
Principal Shareholders	107,822,959	64.70	17,822,959	23.25	34,161,572	22.28	34,161,572	22.28
Underwriters	4,110,781	2.46	4,110,781	5.36	9,705,908	6.33	64,438,834	42.02
Other Shareholders	54,732,926	32.84	54,732,926	71.39	109,465,852	71.39	54,732,926	35.70
<b>TOTAL</b>	<b>166,666,666</b>	<b>100.00</b>	<b>76,666,666</b>	<b>100.00</b>	<b>153,333,332</b>	<b>100.00</b>	<b>153,333,332</b>	<b>100.00</b>

Note: Table B & C do not include related interests that each of the shareholders may have.

\* assumes all shareholders accept their Rights in full and that the Pine Hill Trust, the Rutherglen Trust and the Otago Trustee Company Limited accept the lesser of \$300,000 of new shares or their respective entitlement under the Rights Issue and that Rights not accepted are not sold to and accepted by other parties.



\*\* assumes that the Pine Hill Trust, the Rutherglen Trust and the Otago Trustee Company Limited accept the lesser of \$300,000 of new shares or their respective entitlement under the Rights Issue, that no other shareholder accept their Rights and that those not accepted Rights are not sold to and accepted by other parties.

The disclosed maximum number of shares that PKHB Holdings Limited and Southern Viticulture Limited would be allotted if the Rights Issue was fully called includes shares that these two would have been allotted had they subscribed for their rights under the Rights Issue.

4.4 The following table (Table D) discloses a summary of the major interests in shareholdings in Botry-Zen aggregated by relevant associations excluding combining all the Underwriters as one group.

**TABLE D: Changes in relevant interests after the Share Cancellation and Rights Issue**

Shareholder	Existing		After Cancellation		After Rights Issue Full Acceptance*		After Rights Issue Underwrite fully called**	
	Number of Shares	%	Number of Shares	%	Number of Shares	%	Number of Shares	%
Cheung Tak Hung	42,448,328	25.47	12,448,328	16.24	23,967,867	15.63	17,902,873	11.68
Maxwell Gilbert Shepherd	41,741,766	25.05	11,741,766	15.32	22,927,975	14.95	17,196,311	11.21
David Smallbone	36,801,294	22.08	6,801,294	8.87	13,714,427	8.94	16,776,272	10.94
T D Scott	0				201,310	0.13	8,181,818	5.34
PKHB Holdings	70,500	0.04	70,500	0.09	252,839	0.16	4,615,955	3.01
Southern Viticulture	4,040,281	2.42	4,040,281	5.27	8,348,976	5.44	14,949,372	9.75
Aspiring Asset Management	0				433,060	0.28	17,600,780	11.48
De Tourettes	0				178,942	0.12	7,272,727	4.74
John Paterson	0				178,942	0.12	7,272,727	4.74
Other Shareholders	47,296,161	28.38	47,296,161	61.69	94,592,322	61.69	47,296,161	30.85

\* assumes all shareholders accept their Rights in full and that the Pine Hill Trust, the Rutherglen Trust and the Otago Trustee Company Limited accept the lesser of \$300,000 of new shares or their respective entitlement under the Rights Issue and that Rights not accepted are not sold to and accepted by other parties.

\*\* assumes that the Pine Hill Trust, the Rutherglen Trust and the Otago Trustee Company Limited accept the lesser of \$300,000 of new shares or their respective entitlement under the Rights Issue, that no other shareholder accept their Rights and that those not accepted Rights are not sold to and accepted by other parties.



- 4.5 The following Table E sets out the relevant associations of each of the parties as outlined above are as follows:

**Table E: Associated parties**

<b>Party</b>	<b>Associates</b>
Max Shepherd	Rutherglen Trust Biotechnica Consultants Limited
Cheung Tak Hung	Pine Hill Trust Biotechnica Consultants Limited Zenith Technology Corporation Limited
David Smallbone	SFT Investments Limited Akanaw Investments Limited Tarlogie Investments Limited Otago Trustee Company Limited Alluvial Holdings Limited Jagged Peak Investments Limited Three River Holdings Limited Kathryn Smallbone

- 4.6 The combined holdings of the Underwriters as disclosed in Table C is 42.02%. Once the interests of their associates, exclusively those of David Smallbone, post Rights Issue, are added then the combined interest will be 50% if no shareholder other than the Principal Shareholders take up their entitlement under the Rights Issue.
- 4.7 From Tables B and C, it is our opinion that after the completion of the Share Cancellation and Rights Issue no current Principal Shareholder and its associates will end up with a stronger controlling interest than it had prior to the Share Cancellation and Rights Issue. This is the situation whether or not the Rights Issue is taken up by all shareholders or by the Underwriters.
- 4.8 The Share Cancellation will result in the Principal Shareholders having a decreased control percentage in Botry-Zen. In aggregate the Principal Shareholders hold 64.70%, after the Share Cancellation but before the rights Issue this will fall to 23.25% and on the basis of the Principal Shareholders exercising their Rights to the lesser of their entitlement or \$300,000 each then this will result in an aggregate holding of 22.28%. This represents a significant decrease in their collective control of Botry-Zen.



- 4.9 As disclosed in Table D the current interest of the other shareholders is 28.38% and this will increase to 61.69% if the Rights are fully accepted, or to 30.85% if the Rights are not accepted by shareholders but by are taken up by the Underwriters. If the Underwriters take up the Rights Issue then the change in the level of control able to be exercised by the non-associated shareholders does not change significantly. If the Rights are accepted by existing shareholders then the non-associated shareholder significantly increase their level of control.
- 4.10 Currently the Underwriters together with their associates have a combined interest of 24.54%. After the Cancellation and Rights Issue and if the underwrite is fully called and the Underwriters are required to take up the Rights Issue, the Underwriters and their associates shall have a combined interest of 50.00%. The 24.54% is currently held by 10 shareholders, whereas the 50.00% would be held by 15 shareholders. Therefore control is being diluted based on the increasing number of shareholders.
- 4.11 All shareholders are entitled to participate in the Rights Issue. The greater the number of shareholders that subscribe for shares in the Rights Issue the greater the reduction in percentage shareholding of each of the Principal Shareholders and Underwriters. This is due to the Cancellation of shares and the decision of the Principal Shareholders to accept the lesser of \$300,000 of new shares or their respective entitlement under the Rights Issue.
- 4.12 If a shareholder does not wish to take up their respective Rights and subscribe for shares, that shareholder is able to offer their Rights for sale. The buying party will be unknown, just the same as selling shares on the NZX. Any party could amass enough rights to subscribe for up to 20% of the shares in Botry-Zen. Accordingly one party could become the single largest shareholder by acquiring during rights trading and subscribing for the Rights. This would also dilute the total percentage shareholding of all the Underwriters combined, thus lessening the potential for increased control.



- 4.13 Should any person or persons and any associates of the person or persons acquire more than 20% then this may require compliance with provisions of the Code. This could require that person or persons and any associates of the person or persons to make a partial or full offer. A condition of the exemption from the Code granted by the Takeovers Panel in relation to the Rights Issue is that the underwriters will not purchase any Rights other to the extent permitted under their individual pro rata rights, if any.
- 4.14 In table D we have calculated that after the Cancellation and Rights Issue no one shareholder together with their associates owns more than 12% of Botry-Zen if the Underwriters are required to take up the underwrite in full. Prior to the Cancellation and Rights Issue the Principal Shareholders each own just over 21% of the shares in Botry-Zen. Accordingly the ability for any one shareholder or group of shareholders to influence control after the Cancellation and Rights Issue is diluted from the current position as it stands today.
- 4.15 As stated in paragraph 4.10 there is a scenario where the Underwriters along with their associates may hold 50% of the shares. While the other shareholders would, in total, own an increased percentage a different group of persons and associates would hold a substantial voting interest. We know of no arrangements between the existing Underwriters other than their common interest of being Underwriters to the Rights Issue and further we are not aware of the intentions of the Underwriters post the Transactions.



## 5.0 Underwriting

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5.1 Botry-Zen has concluded that in the interests of certainty in respect of raising the capital sought through the Rights Issue, it is advisable to have the issue underwritten. Accordingly it has entered into an underwriting arrangement with the seven parties noted earlier in this report.

5.2 The Underwriters and their maximum obligations are:

	<u>No of Shares</u>	<u>\$</u>
T D Scott No 2 Family Trust	8,181,818	450,000
PKHB Holdings Limited	4,545,455	250,000
Southern Viticulture Limited	10,909,091	600,000
Aspiring Asset Management Limited	17,600,780	968,043
De Tourettes Holdings Limited	7,272,727	400,000
John Paterson	7,272,727	400,000
David Smallbone	<u>4,545,455</u>	<u>250,000</u>
Total	<u>60,328,053</u>	<u>\$3,318,043</u>

5.3 An Underwriting Fee is payable to each of the Underwriters equivalent to 4% of their maximum obligation. This fee is payable whether or not the Underwrite is called on. In addition, there is a 1% Underwrite Arrangement Fee payable to Aspiring Asset Management Limited as the arranger of the Underwrite. The total underwrite cost therefore will amount to \$165,902.

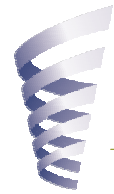
5.4 The performance by the Underwriters of their obligations is conditional on certain warranties remaining accurate, the Underwriters approving the offer documents and no order being issued preventing or suspending the Rights Issue, use of the Prospectus or Investment Statement or preventing the issue of the new shares. In addition, the Company and each Underwriter's obligations shall terminate if Botry-Zen shareholders do not pass the necessary resolutions to be put at the Meeting.



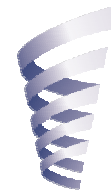
## 6.0 Use of Capital Raised

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- 6.1 Botry-Zen plans to raise \$4,216,667 from the Rights Issue. Similarly to the initial capital raised in 2002, this new capital will be used by Botry-Zen to fund ongoing research and development and the registration of BOTRY-Zen in the major target markets. In addition, it is to provide for the expansion in the plant in order to scale up its manufacturing capability to meet the anticipated demand from the major markets as and when those markets receive the regulatory approval for the commercial introduction of the BOTRY-Zen product into those markets. The directors and management have prepared projections and these project that the new capital raised will be sufficient to fund the investment in research and development, registration in target markets, and the expansion of manufacturing capacity until such time as the operating cashflows become positive.
- 6.2 The expansion plans for the plant have been timetabled to coincide with the regulatory approval in the major markets. Delaying the timing of the plant expansion in line with any delay in receipt of the regulatory approvals mitigates this risk. While such an event may put back the expected returns to the Company it should not in a single event place the Company in financial difficulty.
- 6.3 Since the listing of the Company in 2002 it has built up a track record of controlling its expenditure in line with the forecast and budgeted levels. Where the 2002 forecasts have varied, so that the current Rights Issue has become necessary, is in the research and development time taken to improve the product for the industry users. This has occurred in two main aspects. The first is in the shelf life of the product and this has reached a length so that production can occur on a year round basis once the first overseas market receives regulatory approval. The second is in the state that the product is stored, i.e. granulated.



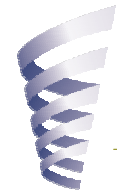
- 6.4 The projections of Botry-Zen allow for all funding to be provided from shareholders. No provision has been made to debt finance any of the expansion of the plant. While this source of funding may be difficult to raise for the initial plant expansion once the product has further market acceptance then, should there be extra capital required to secure overseas approvals, and this absorbs the funding secured to expand the plant, then any additional funding required may be able to be sourced via loans secured against the new equipment required for the plant expansion. We note that Botry-Zen does not own the building currently used for its plant.
- 6.5 The BOTRY-Zen product is a biological control agent for botrytis. It was the first locally manufactured biological control agent released in New Zealand. BOTRY-Zen has been proven to be just as or more effective than competing chemical products. We have been advised that there are now competing biological products available but these do not appear to have been as extensively trialed. We have not attempted to confirm the availability, the trailing or the effectiveness of any such competing products.



## **7.0 Consequence of Rights Issue Not Proceeding**

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- 7.1 The consequence of the Rights Issue not proceeding is serious to Botry-Zen. The Company has carefully managed its expenditure since the initial capital raising, however, those resources are mostly extinguished. The current level of funds (before any new funds coming from the current Rights Issue) is only sufficient to meet two or three months of operations. Arrangements are being finalised to obtain temporary funding to bridge the deficit, should one arise, between the need for funds and the inflow of funds from the Rights Issue. The availability of temporary funds will be contingent on the approval of the Rights Issue by shareholders. Without the successful outcome of the Rights Issue the future development and scale up of Botry-Zen and therefore its commercial viability would be put at serious risk. Botry-Zen has field tested BOTRY-Zen extensively and has advanced (but not completed) the registration process in its two major overseas markets. Without the expected inflow of funds these registration processes will not be able to be completed within the short to medium term. Without this injection of capital the Company would not be able to continue unless it was able to secure funding from some other party. Should the Share Cancellation and Rights Issue not take place and the Company be forced to secure new funds from a third party from a position of financial difficulty then this could be dilutionary to existing shareholders.
- 7.2 Botry-Zen is also applying for grants from other bodies and they have been advised that the success of the applications is dependant on the Share Cancellation and Rights Issue proceeding. The level of grants, if obtained, is expected to be \$700,000.



## 8.0 Protections of Shareholders under the Code

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8.1 McCallum Petterson has been requested to prepare an Independent Adviser's Report under Rule 18 of the Code. One of the purposes is to advise shareholders of the protections and rights available to them under the Code. The fundamental rule of the Code prevents any person from becoming the holder or controller of more than 20% of the voting rights except in a manner permitted by the Code. The exceptions permitted by the Code are a range of compliance options. These include:

- F** the making of a Full or Partial Takeover Offer by the acquirer;
- F** the acquisition or allotment of shares with the approval of an ordinary resolution of the company;
- F** Creep Options (up to 5% per year) if the party holds or controls more than 50%; and
- F** Compulsory Acquisition of remaining shares if the party holds 90% or more.

8.2 The three Principal Shareholders will all have reduced holdings after the Transaction. A possible outcome of the Transaction is that another group of parties, who may be deemed to be acting "in concert" (being the Underwriters), may end up with a holding of more than 20% of the Company. The Code has, as its Fundamental Rule (Rule 6), a prohibition on a person (or a person and his associates) obtaining more than 20% of the voting rights of a code company or if they already held more than 20% obtaining an increased percentage. There are however exceptions to the Fundamental Rule. Under Rule 7(d), a person (or a person and his associates) may become the holder of more than 20% via an allotment of shares if that allotment has been approved by an ordinary resolution of the company in accordance with the Code. The parties who may become the holders of more than 20% are not permitted to vote on the ordinary resolution. Non associated shareholders are given a special right to approve or reject proposals for another shareholder to increase its control percentage. It is for this reason the Company is seeking shareholders approval for the underwriting arrangements.



## 9.0 Summary of the Merits of the Proposal

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9.1 Rule 18 of the Code requires directors of a code company to obtain a report from an independent adviser on the merits of any proposed allotment under rule 7(d) of the Code. Rule 7(d) of the Code addresses the situation where a Code company makes an allotment of sufficient shares to an allottee, such allotment giving the allottee control of more than 20% of the voting rights in the Code company. In our opinion the merits of voting in favour of the resolutions as set out in the Notice of Special Meeting of Botry-Zen, having regard to those persons who may vote to approve the allotment, outweigh the consequences of voting against.

9.1.1 The key reasons that we have arrived at this opinion are:

- Botry-Zen faces a very high risk of failure or sale to a third party should it run out of cash if the Rights Issue does not proceed;
- by voting in favour of the Cancellation and Rights Issue shareholders increase their respective shareholding percentage in Botry-Zen;
- all shareholders are entitled to participate in the Rights Issue and even if a shareholder elects not to, they are entitled to offer their Rights for sale; and
- after the Cancellation and Rights Issue, no one shareholder including their associates owns more than 12% of Botry-Zen if the Underwriters are required to take up the underwrite in full.

9.1.2 We have balanced these positive reasons with the fact that the Underwriters will be required to take up some shares under the Rights Issue as the Principal shareholders are not planning to subscribe for their Rights under the Rights Issue in full. This however only reduces the percentage shareholding of the Principal Shareholders not other shareholders.

9.1.3 Other aspects of the Transaction that could be seen as advantages/disadvantages to those persons who may vote include

- Potential changes in the parties that control the voting of Botry-Zen should the Underwriters have to take up their entitlements.



- If the Rights Issue is taken up by shareholders then this will result in a more diverse shareholding and therefore the company may be a more attractive takeover target.

9.2 The NZSX Listing Rules require the directors of an NZSX listed company to obtain an independent appraisal report for shareholders in a number of circumstances. The Botry-Zen Share Cancellation and Rights Issue require that a Report is prepared.

9.2.1 The Share Cancellation is buying back from the directors or parties associated with the directors 90,000,000 shares, for a total of \$3, and then canceling these shares. These shares represent more than 50% of the shares on issue at the time of cancellation. The terms and conditions of the Share Cancellation as described earlier in this Report (principally in Section 2 and 4.1) and as described in the Notice of Special Meeting of Botry-Zen are, in our opinion, for the reasons outlined in paragraph 9.1.1, fair to the shareholders of Botry-Zen not associated with the Associated Persons.

9.2.2 The Rights Issue is being underwritten. A potential outcome of the Rights Issue is that the Underwriters will be required to take up their full entitlement. While the overall percentage of control of the minority shareholders will not change significantly should these circumstances occur, there would be a different group of persons that together held a substantial interest and therefore had control of Botry-Zen. The terms and conditions of the Underwriting Agreement and Rights Issue as described earlier in this Report (principally in Section 2, 4.2 and 5) and as described in the Notice of Special Meeting of Botry-Zen are, in our opinion, for the reasons outlined in paragraph 9.1.1, fair to the shareholders of Botry-Zen who are not substantially increasing their holdings in Botry-Zen, ie the shareholders of Botry-Zen not associated with the Associated Persons.



9.2.3 The Underwriting Agreements include David Smallbone and Southern Viticulture. These parties are related parties of Botry-Zen. In our opinion, for reasons outlined in paragraph 9.1.1, the Underwriting Agreements are fair to the shareholders not associated with David Smallbone and Southern Viticulture.



## **10.0 Information Relied Upon & Availability of Information**

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10.1 In forming the opinions set out in this Report we have reviewed and relied on the following information:

1. The Annual Reports of Botry-Zen for the financial years 2003, 2004, and 2005.
2. The Half Yearly Interim Reports of Botry-Zen for 2003 and 2004.
3. The NZSE Listing Profile 2002 of Botry-Zen.
4. A draft Underwriting Agreement.
5. A draft Notice of Special Meeting (including Explanatory Notes).
6. An Application for Exemption from the Takeovers Code to the Takeovers Panel.
7. Sundry financial and other information obtained from Botry-Zen including discussions with directors, management and the company's website.

10.2 We have been provided all the information and have received full cooperation from the directors and management in order to allow us to prepare this Report. There were no restrictive terms of reference in our engagement that materially restricted the scope of our Report.

10.3 In our opinion, the information to be provided to the shareholders, including the information contained in this Report, 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 Transaction.



## 11.0 Declarations and Independence

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- 11.1 McCallum Petterson has prepared this Report at the request of those directors of Botry-Zen who are not associated with the relevant “Associated Persons”. This Report is required to be prepared under Rule 18 of the Code and under Rules 6.2.2 and 9.2.5 of the NZSX Listing Rules and arises from Botry-Zen’s planned Share Cancellation and underwritten Rights Issue. This Report is prepared for the benefit of shareholders who are not associated with the Associated Persons. This Report should not be used by any other party or by those parties for any other purpose.
- 11.2 McCallum Petterson is a firm that specialises in certain areas of finance and accountancy. These areas include corporate finance and valuation services involving the buying and selling of businesses and shareholdings, the raising of equity and debt, financial investigations, strategic and turnaround advice. The people responsible for the preparation of this Report are David Vance CA, BCA and David Wallace BCom, DipBusFin, both who have considerable experience in corporate finance and valuation services over the past 17 - 24 years.
- 11.3 McCallum Petterson considers itself to be independent of Botry-Zen, its directors and any Related or Associated Parties. McCallum Petterson, its partners or employees, have not undertaken any previous assignment for Botry-Zen, its directors or major shareholders. The remuneration to be paid to McCallum Petterson for undertaking the preparation of this Report is not contingent on the outcome of the Share Cancellation or the Rights Issue. McCallum Petterson is not, and has had no discussions about being, contracted with Botry-Zen, its directors or major shareholders to perform other services. McCallum Petterson accordingly has no conflict of interest that could affect its ability to provide an unbiased report.



- 11.4 The statements and opinions given in this Report are based on the information made available to us up to the date of this Report. This has included information relating to the future performance of Botry-Zen. We have relied on the projections and assumptions made by the directors and management about future events that by their nature can not be independently verified. Some expected outcomes may not materialise or be significantly different. We have assumed that the information provided to us has been provided in good faith and is free from material error. We reserve the right, but will be under no obligation, to review or amend this Report if any additional information that currently exists comes to our attention that would have led to us arriving at any different opinion than what is expressed in this Report.
- 11.5 Botry-Zen has agreed to indemnify McCallum Petterson and its personnel and contractors in respect of any liability suffered or incurred as a result of or in connection with this Report. This indemnity will not apply in respect of any negligence, willful misconduct or breach of law on the part of McCallum Petterson. Botry-Zen also agreed to indemnify McCallum Petterson and its employees and officers for time incurred and any costs in relation to any inquiry or proceedings initiated by any person. Where McCallum Petterson or its employees or officers are found liable for or guilty of negligence, willful misconduct or breach of law or terms of reference, then McCallum Petterson shall reimburse such costs.



## 12.0 Date of Report

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12.1 This Report was finalised on 5 October 2005.

12.2 This Report is signed by:

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David Vance

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David Wallace