

August 31, 2018

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
NINEPOINT PARTNERS LP**

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from Ninepoint Partners LP for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), in respect of Ninepoint Concentrated Canadian Equity Fund, Ninepoint International Small Cap Fund and Ninepoint UIT Alternative Health Fund (the **Enumerated Funds**), the investment funds listed in Exhibit A (the **Specified Funds**) and all future investment funds that are managed by Ninepoint Partners LP or an affiliate thereof (together, the **Filer**) and that are subject to NI 81-102 (the **Future Funds**, and together with the Enumerated Funds and the Specified Funds, each a **Fund** and, collectively, the **Funds**) exempting:

- a. each Fund that is subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (an **81-101 Fund**) from the requirement in subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;
- b. each 81-101 Fund from the limitation in subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives

positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

- c. each Fund from the requirement in subsection 6.1(1) of NI 81-102 to hold all portfolio assets of an investment fund under the custodianship of one custodian in order to permit each Fund to deposit cash or other portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin,

in each case, with respect to Cleared Swaps (as defined below) (the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Ontario Securities Commission is the principal regulator for the Application; and
- (b) Ninepoint Partners LP has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in each of the provinces and territories of Canada other than Ontario (collectively with Ontario, the Jurisdictions).

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. Capitalized terms used in this decision have the following meanings:

Advisors means the Filer and each third party portfolio manager retained from time to time by the Filer to manage the investment portfolio of one or more Funds as an advisor or sub-advisor.

CFTC means the U.S. Commodity Futures Trading Commission.

Cleared Swap means any OTC derivative transaction that can be entered into on a cleared basis, whether or not such derivative is subject to a clearing determination or a clearing obligation issued by the CFTC or ESMA, as the case may be.

Clearing Corporation means any clearing organization registered with the CFTC or central counterparty authorized by ESMA, as the case may be, that, in either case, is also recognized or exempt from recognition in Ontario.

Dodd-Frank means the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

EMIR means the European Market Infrastructure Regulation.

ESMA means the European Securities and Markets Authority.

European Economic Area means all of the European Union countries and also Iceland, Liechtenstein and Norway.

Futures Commission Merchant means any futures commission merchant that is registered with the CFTC and/or clearing member for purposes of EMIR, as applicable, and is a member of a Clearing Corporation.

LSOC Model means the legally segregated operationally commingled model adopted by the CFTC for Cleared Swaps collateral.

OTC means over-the-counter.

U.S. Person has the meaning attributed thereto by the CFTC.

Representations

This decision is based on the following facts represented by Ninepoint Partners LP:

1. Ninepoint Partners LP is a limited partnership formed and organized under the laws of the Province of Ontario. The general partner of Ninepoint Partners LP is Ninepoint Partners GP Inc., a corporation incorporated under the laws of the Province of Ontario. The head office of Ninepoint Partners LP is located in Ontario.
2. Ninepoint Partners LP is registered as (i) an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, (ii) a portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador, and (iii) an exempt market dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador and Quebec. Neither Ninepoint Partners LP nor any of the Enumerated Funds or Specified Funds is in default of securities legislation in any province or territory of Canada.
3. The Filer is, or will be, the portfolio manager to the Funds. One of the Advisors, other than the Filer, may act as sub-advisor to the portfolio manager with respect to a Fund.
4. Each Fund is, or will be, an investment fund created under the laws of Ontario or another jurisdiction of Canada and is, or will be, subject to the provisions of NI 81-102.
5. The securities of each Fund are, or will be, qualified for distribution pursuant to a prospectus that was, or will be, prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, each Fund is, or will be, a reporting issuer or the equivalent in each Jurisdiction.
6. Ninepoint Partners LP became the manager and portfolio adviser of the Specified Funds when the management agreements relating to the Specified Funds were transferred to Ninepoint Partners LP by Sprott Asset Management LP pursuant to an Asset Purchase Agreement among, inter alia, Sprott Asset Management LP, Sprott Private Wealth LP and

Ninepoint Financial Group Inc. (formerly 2568004 Ontario Inc.) dated April 10, 2017, as filed on SEDAR under the profile of Sprott Inc., as the same may be amended, supplemented or modified from time to time in accordance with its terms.

7. Ninepoint Partners LP acquired the management agreement relating to Ninepoint UIT Alternative Health Fund from Redwood Asset Management Inc. pursuant to the approval of securityholders of that fund on March 19, 2018 and pursuant to regulatory approval of the change of manager in a decision dated March 12, 2018. Ninepoint Partners LP recently launched the Ninepoint Concentrated Canadian Equity Fund and Ninepoint International Small Cap Fund by way of simplified prospectus and annual information form dated April 23, 2018.
8. Each of the Specified Funds obtained the same relief as the Requested Relief evidenced by a decision dated January 7, 2016 (the **Specified Prior Relief**). Ninepoint Partners LP, as the current manager of the Specified Funds, is now seeking to obtain the Requested Relief in a separate, new decision, reflecting itself as the current manager of the Specified Funds, and on behalf of the Specified Funds, the Enumerated Funds and the Future Funds the Filer may establish in the future.
9. Should the Requested Relief be granted, neither the Filer nor any of the Funds will rely on the Specified Prior Relief. The Specified Prior Relief will continue to apply to existing and future investment funds managed by Sprott Asset Management LP.
10. The investment objective and investment strategies of each Fund permit, or will permit, the Fund to enter into derivative transactions, including Cleared Swaps. Ninepoint Partners LP considers Cleared Swaps to be an important investment tool that is available to it to properly manage a Fund's portfolio.
11. The Dodd-Frank Act requires that certain OTC derivatives be cleared through a Futures Commission Merchant at a Clearing Corporation.
12. EMIR also requires that certain OTC derivatives be cleared through a central counterparty authorized to provide clearing services for purposes of EMIR. Generally, where one party to a swap is a financial counterparty or a non-financial counterparty whose OTC derivative trading activity exceeds a certain threshold, in each case established in a state that is a participant in the European Economic Area, that swap will be required to be cleared.
13. In addition to clearing swaps that are mandated to be cleared under the Dodd-Frank Act and/or EMIR, many of the Clearing Corporations offer clearing services in respect of other types of derivative transactions. Many global derivative end-users enter into Cleared Swaps on both a voluntary and a mandatory basis.
14. In order to benefit from both the pricing benefits and reduced trading costs that an Advisor is often able to achieve through its trade execution practices for its managed investment funds and accounts and from the reduced costs associated with Cleared Swaps as compared to other OTC trades, Ninepoint Partners LP wishes that the Funds have the ability to enter into Cleared Swaps.

15. In the absence of the Requested Relief, an Advisor will need to structure the derivative transactions entered into by the applicable Funds so as to avoid clearing, including the clearing requirements of the CFTC and under EMIR, as applicable. Ninepoint Partners LP respectfully submits that this would not be in the best interests of the Funds and their investors for a number of reasons, as set out below.
16. Ninepoint Partners LP strongly believes that it is in the best interests of the Funds and their investors to continue to be able to execute OTC derivatives with global counterparties, including U.S. and European swap dealers.
17. An Advisor may use common trade execution practices for all of its accounts, including the Funds. If these practices involve the use of Cleared Swaps and if the Funds are unable to employ these trade execution practices, then the Advisor would have to create separate trade execution practices only for the Funds and would have to execute trades for the Funds on a separate basis. This would increase the operational risk for the Funds and would prevent the Funds from benefitting from the pricing benefits and reduced trading costs that an Advisor may be able to achieve through common practices for its advised accounts. In the opinion of Ninepoint Partners LP, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Cleared Swaps.
18. In its role as a fiduciary for the Funds, Ninepoint Partners LP has determined that central clearing represents a good choice for the investors in the Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.
19. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Funds. Ninepoint Partners LP respectfully submits that the Funds should be encouraged to comply with the robust clearing requirements established by the CFTC and under EMIR by granting them the Requested Relief.
20. The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, i.e., clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, such Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.
21. For the reasons provided above, Ninepoint Partners LP submits that it would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that the Clearing Corporation is permitted to offer customer clearing of OTC

derivatives in the Jurisdiction where the applicable Fund is located and provided further that, in respect of the deposit of cash and other portfolio assets as margin:

- a. in Canada,
 - i. the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and
 - ii. the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit; and
- b. outside of Canada,
 - i. the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;
 - ii. the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of \$50 million; and
 - iii. the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit.

This decision will terminate on the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives.

“Neeti Varma”

Neeti Varma
Acting Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

SEDAR #2700582, 2700590, 2700595 & 2700600

EXHIBIT A
SPECIFIED FUNDS

Public Trust Funds

1. Ninepoint Gold Bullion Fund
2. Ninepoint Silver Bullion Fund
3. Ninepoint Diversified Bond Fund
4. Ninepoint Energy Fund
5. Ninepoint Global Infrastructure Fund
6. Ninepoint Global Real Estate Fund
7. Ninepoint Gold and Precious Minerals Fund
8. Ninepoint Short Term Bond Fund
9. Ninepoint Enhanced Balanced Fund

Public Corporate Class Funds

1. Ninepoint Diversified Bond Class
2. Ninepoint Real Asset Class
3. Ninepoint Resource Class
4. Ninepoint Short-Term Bond Class
5. Ninepoint Silver Equities Class
6. Ninepoint Enhanced Balanced Class
7. Ninepoint Enhanced Equity Class
8. Ninepoint Enhanced U.S. Equity Class
9. Ninepoint Focused Global Dividend Class
10. Ninepoint Focused U.S. Dividend Class

Public Listed Funds

1. Ninepoint Energy Opportunities Trust