

February 26, 2026

**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  
(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer, in respect of each of the existing funds and future investment funds that are managed or may be managed by the Filer now or in the future (collectively, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

- (a) revoking and replacing the Previous Decision (as defined below); and
- (b) exempting each Fund from the following provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**) in order to permit the Funds to invest in securities of existing and future exchange-traded funds (**ETFs**, and each, an **ETF**) that are not index participation units (**IPUs**, and each, an **IPU**) and whose securities are, or will be, listed for trading on a stock exchange in the United States (the **Underlying ETFs**, and each, an **Underlying ETF**):
  - (i) paragraphs 2.5(2)(a) and (a.1) to permit each Fund to purchase and/or hold securities of an Underlying ETF even though the Underlying ETF is not subject to NI 81-102; and
  - (ii) paragraph 2.5(2)(c) to permit each Fund to purchase and/or hold securities of an Underlying ETF even though the Underlying ETF is not a reporting issuer in any province or territory of Canada.

(collectively, the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer 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 other provinces and territories of Canada (together with Ontario, the **Canadian Jurisdictions**, and each, a **Canadian Jurisdiction**).

## **Interpretation**

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

## **Representations**

### *The Filer*

1. The Filer is a limited partnership formed and organized under the laws of the Province of Ontario. The general partner of the Filer is Ninepoint Partners GP Inc., a corporation incorporated under the laws of the Province of Ontario. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is registered under the securities legislation: (i) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as an adviser in the category of portfolio manager; (ii) in Ontario, Newfoundland and Labrador and Quebec as an investment fund manager; and (iii) in British Columbia, Alberta, Quebec, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as a dealer in the category of exempt market dealer. The Filer is also registered in Ontario as a commodity trading manager.
3. The Filer or an affiliate or successor of the Filer is, or will be, the manager of the Funds.
4. The Filer is not in default of securities legislation in any of the Canadian Jurisdictions.

### *The Previous Decision*

5. In a previous decision granted to the Filer dated January 17, 2025 (the **Previous Decision**), the Filer was granted relief from paragraph 2.5(2)(a), paragraph 2.5(2)(a.1) and paragraph 2.5(2)(c) of NI 81-102 to permit the Funds to invest in securities of ETFs that are not IPU, including U.S. underlying ETFs. The Filer is requesting that the Previous Decision be revoked and replaced with this decision for the following reasons:
  - (a) the Previous Decision granted relief from paragraph 2.5(2)(a) and (a.1) of NI 81-102 to permit the Funds that are or will be mutual funds, alternative mutual funds or nonredeemable investment funds to invest in Underlying ETFs that are registered under the United States *Investment Company Act* of 1940, as amended (the '**40 Act**'), even though the Underlying ETF is not subject to NI 81-102. However, it did

not extend relief to Underlying ETFs that are registered under the United States *Securities Act* of 1933, as amended (the ‘33 Act);

- (b) the Previous Decision granted relief from paragraph 2.5(2)(c) of NI 81-102 to permit the Funds to invest in securities of an Underlying ETF even though the Underlying ETF is not a reporting issuer in any Canadian Jurisdiction; and
- (c) since the Previous Decision’s reference to Underlying ETFs did not include ETFs that are registered under the ‘33 Act, which are generally ETFs that invest in commodities, currencies, and digital assets (similar to certain alternative mutual funds subject to NI 81-102), the Filer is seeking a decision that expands upon the Previous Decision and requests that the Previous Decision be revoked and replaced with this decision in respect of the Exemption Sought, to clarify that the Underlying ETFs, in which the Funds may invest include those subject to either the ‘33 Act or the ‘40 Act, and that operate in a manner that is substantially similar to an ETF under Canadian securities legislation.

#### *The Funds*

- 6. Each Fund is, or will be, an investment fund organized and governed by the laws of a Canadian Jurisdiction.
- 7. Each Fund is, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities.
- 8. Each Fund is, or will be, a reporting issuer in one or more Canadian Jurisdictions.
- 9. Each Fund is, or will be, subject to National Instrument 81-107 Independent Review Committee for Investment Funds.
- 10. The Funds may, from time to time, wish to invest in Underlying ETFs. The Funds currently invest in Underlying ETFs that are subject to the ‘40 Act, as permitted by the Previous Decision or NI 81-102, as applicable, and intend to invest in certain Underlying ETFs registered under the ‘33 Act. These Underlying ETFs may be preferred from time to time for their larger size, potentially improved liquidity, and/or lower overall cost relative to similar Canadian mutual funds or ETFs.
- 11. None of the existing Funds is in default of applicable securities legislation in any Canadian Jurisdiction.

#### *The Underlying ETFs*

- 12. The securities of an Underlying ETF will not meet the definition of an IPU in NI 81-102 because the purpose of the Underlying ETF will not be to:
  - (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index; or

- (b) invest in a manner that causes the Underlying ETF to replicate the performance of that index.
13. An Underlying ETF's investment objectives and strategies will be consistent with the investment restrictions in NI 81-102 and, as such, a Fund's investment in securities of an Underlying ETF will not cause the Fund to indirectly invest in assets or have access to investment strategies that it would not be permitted to have directly.
  14. Each Underlying ETF will be an "investment company" subject to the '40 Act or regulated by the United States Securities and Exchange Commission (SEC) as a reporting issuer under the '33 Act. Shares of an Underlying ETF will be registered with the SEC under the '40 Act or the '33 Act and will be offered in the primary market in a manner similar to the Funds pursuant to a prospectus filed with the SEC which discloses a description of the Underlying ETF's properties and business, a description of the securities being offered for sale, information about the management of the Underlying ETF and financial statements certified by independent accountants, in a manner that is similar to the disclosure requirements under NI 41-101 *General Prospectus Requirements* and Form 41-101F2 *Information Required in an Investment Fund Prospectus*.
  15. Each Underlying ETF will prepare key investor information documents which provide disclosure that is substantially similar to the disclosure required to be included in the ETF facts document required by Form 41-101F4 *Information Required in an ETF Facts Document*.
  16. Each Underlying ETF will be subject to continuous disclosure obligations which are substantially similar to the disclosure obligations under National Instrument 81-106 *Investment Fund Continuous Disclosure*. An Underlying ETF will be required to update information of material significance in its prospectus, to prepare management reports and an unaudited set of financial statements at least quarterly, and to prepare management reports and an audited set of financial statements annually.
  17. Each Underlying ETF is, or will be, an "investment fund" within the meaning of applicable Canadian securities legislation.
  18. The securities of an Underlying ETF are, or will be, listed on a national securities exchange in the United States and the market for them is, or will be, liquid because it is, or will be, supported by registered broker-dealers that have a role similar to "designated brokers" for Canadian exchange-traded funds. As a result, the Filer expects a Fund to be able to dispose of such securities through market facilities in order to raise cash, including to fund the redemption requests of its securityholders.
  19. An Underlying ETF may be managed by the Filer or an affiliate or associate of the Filer, or by a third party investment fund manager.
  20. An investment in an Underlying ETF by a Fund will otherwise comply with section 2.5 of NI 81-102, including that:
    - (a) no Underlying ETF will hold more than 10% of its net asset value (NAV) in securities of another investment fund unless the Underlying ETF (a) is a clone fund, as defined in NI 81-102, or (b) in accordance with NI 81-102, purchases or holds

securities (i) of a money market fund, as defined in NI 81-102, or (ii) that are IPU's issued by an investment fund; and

- (b) no Fund will pay management or incentive fees which to a reasonable person would duplicate a fee payable by an Underlying ETF for the same service.
21. Absent the Exemption Sought, an investment by a Fund in an Underlying ETF would:
- (a) be prohibited by paragraphs 2.5(2)(a) or (a.1) of NI 81-102, as applicable, because such Underlying ETF may not be subject to NI 81-102;
  - (b) be prohibited by paragraph 2.5(2)(c) of NI 81-102 because such Underlying ETF may not be a reporting issuer in any Canadian Jurisdiction; and
  - (c) not qualify for the exception in paragraph 2.5(3)(a) of NI 81-102 because the securities of the Underlying ETF are not IPU's.
22. The key benefits of a Fund investing in the Underlying ETFs are greater choices, lower fees and expenses, improved portfolio diversification and liquidity, and potentially enhanced returns. For example:
- (a) an investment in an Underlying ETF may lead to efficiencies that result from lower operating expenses and overall management fees than investing directly or through other ETFs
  - (b) an investment in an Underlying ETF will provide the Fund with access to specialized knowledge, expertise and/or analytical resources of the investment adviser to the Underlying ETFs;
  - (c) the Underlying ETFs provide a potentially better risk profile, diversification and/or improved liquidity/tradability compared to direct holdings of asset classes to which the Underlying ETFs provide exposure or to other ETFs; and
  - (d) the investment strategies of the Underlying ETFs offer significantly broader exposure to asset classes, sectors and markets than those available in the existing Canadian market.
23. The Filer submits that having the option to allocate a portion of a Fund's assets to one or more Underlying ETFs will increase diversification opportunities and may improve the Fund's overall risk/reward profile.
24. An investment in an Underlying ETF by a Fund is an efficient and cost-effective alternative to obtaining exposure to securities held by the Underlying ETF rather than the Fund purchasing those securities directly or investing in other ETFs.
25. An investment in an Underlying ETF by a Fund should pose limited investment risk to the Fund because each Underlying ETF will be a reporting issuer in the United States and as such subject to applicable laws.

## 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 Exemption Sought is granted provided that:

- (a) the investment by a Fund in securities of an Underlying ETF is in accordance with the investment objectives of the Fund;
- (b) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the NAV of the Fund, in aggregate, taken at market value at the time of the purchase, would consist of securities of Underlying ETFs;
- (c) securities of each Underlying ETF are listed on an exchange in the United States that is registered with the SEC under Section 6 of the Securities Exchange Act of 1934 as a national securities exchange;
- (d) each Underlying ETF is, immediately before the purchase by a Fund of securities of that Underlying ETF:
  - (i) an “investment company” subject to the ‘40 Act and in good standing with the SEC;  
or
  - (ii) regulated by the SEC as a reporting issuer under the '33 Act and in good standing with the SEC; and
- (e) the prospectus of each Fund discloses, or will disclose in the next renewal of its prospectus following the date of this decision, in the investment strategy section, the fact that the Fund has obtained the Exemption Sought to permit investments in Underlying ETFs on the terms described in this decision.

*“Darren McKall”*

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Ontario Securities Commission

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