

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**

**AND**

**IN THE MATTER OF THE FUNDS  
(as defined below)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from Ninepoint Partners LP on behalf of the Specified, Enumerated and Future Funds (defined below) managed and/or advised by Ninepoint Partners LP or an affiliate thereof (together, the **Filed**) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies other than Ninepoint Gold Bullion Fund and Ninepoint Silver Bullion Fund, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to section 19.1 of NI 81-102:

- (a) exempting the Funds from sections 2.3(1)(f) and 2.3(1)(h) of NI 81-102 to permit each Fund to invest indirectly in physical commodities other than gold through investments in Commodity ETFs (as defined below) (the **Commodity Relief**);
- (b) exempting the Funds from sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Fund to invest in the following categories of exchange-traded funds (**ETFs**) traded on a stock exchange in Canada or the United States that do not qualify as “index participation units” (**IPUs**) (as defined in NI 81-102) (the following ETFs are each referred to as an **Underlying ETF** and collectively as **Underlying ETFs**) (the **FOF Relief**):

- (i) ETFs that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the **Underlying Index**) by a multiple of up to 200% (**Leveraged Bull ETFs**) or an inverse multiple of up to 200% (**Leveraged Bear ETFs**, which, together with Leveraged Bull ETFs are collectively referred to as **Leveraged ETFs**);
- (ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of up to 100% (**Inverse ETFs**);
- (iii) ETFs that seek to provide daily results that replicate the daily performance of gold or silver or the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis (the **ETF's Underlying Gold or Silver Interest**), by a multiple of up to 200% (**Leveraged Gold ETFs** and **Leveraged Silver ETFs**, respectively); and
- (iv) ETFs that have exposure to one or more physical commodities, including but not limited to gold and silver, on an unlevered basis (**Unlevered Commodity ETFs**, which, together with Leveraged Gold ETFs and Leveraged Silver ETFs, are collectively referred to as **Commodity ETFs**),

(collectively, 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 section 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.

### **Interpretation**

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

The term **Enumerated Funds** when used herein means the investment funds set out in Exhibit A hereto under the heading “Enumerated Funds.”

The term **Future Funds** when used herein means investment funds that will be reporting issuers to which NI 81-102 applies and of which the Filer will act as manager and/or portfolio adviser in the future.

The term **Specified Funds** when used herein means the investment funds set out in Exhibit A hereto under the heading “Specified Funds.”

The term **Funds** when used herein means collectively the Specified Funds, the Enumerated Funds and the Future Funds (each, a **Fund**).

## **Representations**

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

### ***Ninepoint Partners LP and the Funds***

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.
3. The Filer acts, or will act, as manager and portfolio manager of each of the Funds.
4. Each Fund is, or will be, a mutual fund governed by the laws of Canada or a jurisdiction in Canada and a reporting issuer under the laws of one or more provinces and territories of Canada.
5. Neither Ninepoint Partners LP nor the Funds that are currently managed by Ninepoint Partners LP are in default of securities legislation in any of the provinces or territories of Canada.
6. Securities of each Fund are, or will be, qualified for distribution in some or all of the jurisdictions of Canada under a simplified prospectus, annual information form and fund facts prepared and filed in accordance with National Instrument 81-101 - *Mutual Fund Prospectus Disclosure*. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

### ***Existing Relief***

7. 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.

8. 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.
9. Each of the Specified Funds obtained the same relief as the Requested Relief evidenced by a decision dated December 16, 2015 (the **Specified Prior Relief**). Ninepoint Partners LP, as the current manager and portfolio advisor 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.
10. 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.
11. In addition to the Specified Prior Relief, each of Ninepoint Resource Class, Ninepoint Silver Equities Class and Ninepoint Gold and Precious Minerals Fund has, in relation to their respective investment strategies, already obtained an exemption from the requirements of sections 2.3(1)(e), 2.3(1)(f) and/or 2.3(1)(h) of NI 81-102, as applicable, to invest in certain physical commodities, as described below (collectively, the **Other Relief**). In respect of these Funds, Ninepoint Partners LP seeks to extend and complement the Other Relief.
12. Ninepoint Resource Class obtained relief to invest up to 10% of its total net assets, taken at market value at the time of purchase, in gold, permitted gold certificates, silver, silver certificates and/or specified derivatives of which the underlying interest is gold or silver in a decision document dated January 31, 2012.
13. Ninepoint Silver Equities Class is a “precious metals fund” as defined in National Instrument 81-104 *Commodity Pools* (**NI 81-104**). Ninepoint Silver Equities Class obtained relief to invest up to 20% of its total net assets, taken at market value at the time of purchase, in silver, silver certificates and/or specified derivatives of which the underlying interest is silver in a decision document dated January 31, 2012.
14. Ninepoint Gold and Precious Minerals Fund is a “precious metals fund” as defined in NI 81-104. Ninepoint Gold and Precious Minerals Fund obtained relief (i) to invest more than 10% of its net assets, taken at the market value thereof at the time of investment, in gold, gold certificates or specified derivatives of which the underlying interest is gold, and (ii) to permit the Fund to obtain indirect exposure to, or invest directly in, precious metals and minerals in a decision document dated October 24, 2001.

### ***The Underlying ETFs***

15. Each Leveraged ETF will be generally rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.
16. Each Inverse ETF will be generally rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed 100% of the corresponding daily performance of its Underlying Index.
17. Each Leveraged Gold ETF and Leveraged Silver ETF will be generally rebalanced daily to ensure that its performance and exposure to its Underlying Gold or Silver Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold or Silver Interest. Each Leveraged Gold ETF and Leveraged Silver ETF provides a Fund with market value exposure to the underlying physical commodity (i.e. gold or silver) that is two times the net asset value of the ETF on a daily basis.
18. Each Underlying ETF is, or will be, a “mutual fund” as such term is defined under the *Securities Act* (Ontario).
19. The securities of each Underlying ETF trade, or will trade, on a stock exchange in Canada or the United States.
20. The assets of a Leveraged Gold ETF and Leveraged Silver ETF consist primarily of gold or silver, as the case may be, or derivatives the underlying interest of which is gold or silver on an unlevered basis, as the case may be. The objective of these ETFs is to reflect the price of gold or silver, as the case may be, (less the ETF’s expenses and liabilities) on a leveraged basis.
21. The assets of Unlevered Commodity ETFs consist primarily of one or more physical commodities, or derivatives that have an underlying interest in such physical commodity or commodities. These physical commodities may include, without limitation, precious metals commodities (such as gold, silver, platinum, platinum certificates, palladium and palladium certificates), energy commodities (such as crude oil, gasoline, heating oil and natural gas), industrials and/or metals commodities (such as aluminum, copper, nickel and zinc) and agricultural commodities (such as coffee, corn, cotton, lean hogs, live cattle, soybeans, soybean oil, sugar and wheat). The objective of an Unlevered Commodity ETF is to reflect the price of the applicable commodity or commodities (less such Unlevered Commodity ETF’s expenses and liabilities) on an unlevered basis, or track the performance of an index which is intended to reflect the changes in the market value of the applicable physical commodity or commodities sector.

### ***Investment in the Underlying ETFs***

22. The Funds propose to have the ability to invest in the Underlying ETFs, the securities of which are not IPUs.

23. Each Fund is, or will be, permitted, in accordance with its investment objectives and investment strategies, to invest in the Underlying ETFs.
24. An investment by a Fund in securities of an Underlying ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.
25. Any regulatory concerns, such as undue risk, liquidity concerns or lack of transparency, in connection with investing in the Underlying ETFs are mitigated by the following facts:
  - (a) The Underlying ETFs trade on a Canadian or U.S. exchange and are generally relatively liquid. The Underlying ETFs will either be “registered” investment companies in the United States or reporting issuers in one or more jurisdictions in Canada, which means that there will be clear disclosure about the Underlying ETFs readily available in the marketplace.
  - (b) The amount of loss that can result from an investment by a Fund in an Underlying ETF will be limited to the amount invested by the Fund in securities of the Underlying ETF.
  - (c) Investments by the Funds in Commodity ETFs will be very limited. In accordance with the investment strategies of the Funds, no more than 10% of the net asset value of the Fund will be invested in a combination of Underlying ETFs taken at market value at the time of purchase.
  - (d) The simplified prospectus of the Funds will disclose: (i) in the investment strategy section: (I) that the Fund has obtained relief to invest in securities of the Underlying ETFs; (II) an explanation of what each type of Underlying ETFs is; (III) to the extent the Fund may invest in securities of a Commodity ETF, that the Fund may indirectly invest in gold and other physical commodities; and (ii) the risks associated with such investments and strategies.

## **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:

1. The Commodity Relief and FOF Relief is granted, provided that:
  - (a) the investment by a Fund in securities of an Underlying ETF is in accordance with the fundamental investment objectives of the Fund;
  - (b) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;
  - (c) a Fund does not purchase securities of Inverse ETFs or securities of Leveraged Bear ETFs or sell any securities short if, immediately after the transaction, the Fund’s

aggregate market value exposure represented by all such securities purchased and securities sold short would exceed 20% of the net asset value of the Fund, taken at market value at the time of the transaction;

- (d) other than Ninepoint Silver Equities Class and Ninepoint Gold and Precious Minerals Fund, a Fund's market value exposure (whether direct or indirect, including through Commodity ETFs) to all physical commodities (including gold) does not exceed 10% of the net asset value of the Fund, taken at market value at the time of the transaction;
- (e) for Ninepoint Silver Equities Class,
  - (i) the Fund only purchases Commodity ETFs that provide exposure to silver; and
  - (ii) the Fund's market value exposure (whether direct or indirect, including through Commodity ETFs) to silver does not exceed 20% of the net asset value of the Fund, taken at market value at the time of the transaction;
- (f) for Ninepoint Gold and Precious Minerals Fund,
  - (i) the Fund only purchases Commodity ETFs that provide exposure to gold, silver and other precious metals and minerals; and
  - (ii) the Fund's market value exposure (whether direct or indirect, including through Commodity ETFs) to gold, silver and other precious metals and minerals does not exceed 100% of the net asset value of the Fund, taken at market value at the time of the transaction;
- (g) each Fund does not purchase securities of an Underlying ETF if, immediately after the transaction, more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction, would consist of securities of Underlying ETFs;
- (h) the simplified prospectus of each Specified Fund and each Enumerated Fund discloses, and the simplified prospectus of each Future Fund will disclose:
  - (i) in the investment strategy section:
    - (A) that the Fund has obtained relief to invest in securities of the Underlying ETFs;
    - (B) an explanation of what each type of Underlying ETFs is; and
    - (C) to the extent the Fund may invest in securities of a Commodity ETF, that the Fund may indirectly invest in gold and other physical commodities; and
  - (ii) the risks associated with such investments and strategies.

*“Neeti Varma”*

---

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

SEDAR #2700527

**EXHIBIT A**  
**SPECIFIED FUNDS**

1. Ninepoint Diversified Bond Fund
2. Ninepoint Energy Fund
3. Ninepoint Global Infrastructure Fund
4. Ninepoint Global Real Estate Fund
5. Ninepoint Gold and Precious Minerals Fund
6. Ninepoint Short Term Bond Fund
7. Ninepoint Enhanced Balanced Fund
8. Ninepoint Diversified Bond Class
9. Ninepoint Real Asset Class
10. Ninepoint Resource Class
11. Ninepoint Short-Term Bond Class
12. Ninepoint Silver Equities Class
13. Ninepoint Enhanced Balanced Class
14. Ninepoint Enhanced Equity Class
15. Ninepoint Enhanced U.S. Equity Class
16. Ninepoint Focused Global Dividend Class
17. Ninepoint Focused U.S. Dividend Class

**ENUMERATED FUNDS**

1. Ninepoint Concentrated Canadian Equity Fund
2. Ninepoint International Small Cap Fund
3. Ninepoint UIT Alternative Health Fund