

Roma Lotay  
T 416.367.6352  
RLotay@blg.com

Kelechi Adanyi  
T 416.367.6083  
kadanyi@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 3400  
Toronto, ON, M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



January 19, 2026

**VIA SEDAR+**

Ontario Securities Commission  
PO Box 55, Suite 1900  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

Dear Sirs/Mesdames:

**Re: Ninepoint Partners LP**

**Passport Application made under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203) and Multilateral Instrument 11-202 *Passport System* (MI 11-202)**

**Application for Exemptive Relief from paragraphs 2.2(1)(a), 2.5(2)(a), (a.1) and (c) of National Instrument 81-102 *Investment Funds* (NI 81-102) pursuant to section 19.1 of NI 81-102 (the Application)**

**I. INTRODUCTION**

We act as legal counsel to Ninepoint Partners LP (the **Filer**) and, on its behalf, make this Application 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**), to revoke and replace the previous decision granted to the Filer on January 17, 2025 as described below (the **Previous Decision**) and grant the Exemption Sought (as defined below).

**II. PRINCIPAL JURISDICTION**

In accordance with Part 4 of MI 11-102 and section 3.6 of NP 11-203, the Ontario Securities Commission has been selected as the principal regulator (the **Principal Regulator**) for the purposes of this Application, as the head office of the Filer is located in Toronto, Ontario.

The Exemption Sought is sought in each of the other provinces and territories of Canada (the **Other Jurisdictions**, together with Ontario, the **Canadian Jurisdictions**). In accordance with subsection 4.7(2) of MI 11-102, the Filer gives notice to the Principal Regulator pursuant to subsection 4.7(1)(c) of MI 11-102 that the Exemption Sought is to be relied upon by the Filer and the Funds in each of the Other Jurisdictions.

### III. EXEMPTION SOUGHT

On behalf of the Filer, we hereby request a decision under the securities legislation of the Principal Regulator (the **Legislation**):

- (a) revoking and replacing the Previous Decision; and
- (b) exempting each Fund from the following provisions of NI 81-102 in order to permit the Funds to invest in securities of existing and future exchange-traded funds (**ETFs**) that are not index participation units (**IPUs**) and whose securities are, or will be, listed for trading on a stock exchange in the United States (the **Underlying ETFs**):
  - (i) paragraph 2.2(1)(a) (the **Control Restriction**) to permit each Fund to purchase securities of an Underlying ETF even though, immediately after the purchase, the Fund would hold securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the Underlying ETF, or (ii) the outstanding equity securities of the Underlying ETF (the **Control Relief**);
  - (ii) 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
  - (iii) 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**).

### IV. DEFINITIONS

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

### V. THE PREVIOUS DECISION

In the Previous Decision dated January 17, 2025, 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 IPUs, 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;
- (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; and
- (d) the Previous Decision did not grant relief from the Control Restriction.

## VI. RELEVANT FACTS

In support of this Application, the Filer makes the following 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 Funds*

5. Each Fund is, or will be, an investment fund organized and governed by the laws of a Canadian Jurisdiction.

6. 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.
7. Each Fund is, or will be, a reporting issuer in one or more Canadian Jurisdictions.
8. Each Fund is, or will be, subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.
9. 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.
10. None of the existing Funds is in default of applicable securities legislation in any Canadian Jurisdiction.

*The Underlying ETFs*

11. 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.
12. 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.
13. Each Underlying ETF will be an "investment company" subject to the '40 Act or regulated by the 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 and Form 41-101F2.
14. 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*.

15. 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.
16. Each Underlying ETF is, or will be, an “investment fund” within the meaning of applicable Canadian securities legislation.
17. 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.
18. 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.
19. 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 IPUs 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.
20. 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 IPUs.

21. Absent the Control Relief, an investment by a Fund in securities of an Underlying ETF will not qualify for the exemption set out in paragraph 2.2(1.1)(b) of NI 81-102 in respect of the Control Restriction because securities of the Underlying ETFs are not IPU's.

## **VII. SUBMISSIONS**

We submit the Exemption Sought should be granted for the following reasons:

17. If each Underlying ETF were a Canadian investment fund, each Fund would be permitted to invest up to 10% of its assets in such Underlying ETFs.
18. 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.
19. 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.
20. 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.
21. 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.
22. Due to the potential size disparity between a Fund and an Underlying ETF, it is possible that a relatively small investment, on a percentage of NAV basis, by a relatively larger Fund in securities of an Underlying ETF could result in such Fund holding securities representing

more than 10% of: (i) the votes attaching to the outstanding voting securities of the Underlying ETF, or (ii) the outstanding equity securities of that Underlying ETF, contrary to the Control Restriction.

23. **Precedent Relief** – Relief in connection with mutual funds investing in foreign investment funds has been granted in the following decisions, including the Previous Decision: *In the Matter of SLGI Asset Management Inc.* (October 9, 2025), *In the Matter of CI Investments Inc. and its Affiliates* (July 23, 2025), and *In the Matter of Harvest Portfolios Group Inc.* (April 23, 2025).

On the basis of the foregoing, we respectfully submit that granting the Exemption Sought is in the best interests of the Funds and is not prejudicial to the public interest or to securityholders of the Funds.

### **VIII. OTHER MATTERS**

In connection with this Application we have included the following materials:

- (a) verification statement; and
- (b) a draft decision document granting the Exemption Sought.

We confirm that we have concurrently paid the applicable filing fees to the Principal Regulator.

Should you have any questions or require any further information, please do not hesitate to contact us.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*“Borden Ladner Gervais LLP”*

**VERIFICATION STATEMENT**

**TO: ONTARIO SECURITIES COMMISSION**

**RE: NINEPOINT PARTNERS LP**

**Passport Application made under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203) and Multilateral Instrument 11-202 *Passport System* (MI 11-202)**

**Application for Exemptive Relief from paragraphs 2.2(1)(a), 2.5(2)(a) and (c) of National Instrument 81-102 *Investment Funds* (NI 81-102) pursuant to section 19.1 of NI 81-102**

The undersigned hereby authorizes the making and filing of the attached application by Borden Ladner Gervais LLP and confirms the truth of the facts contained therein.

**DATED** as of this 19<sup>th</sup> day of January, 2026.

**NINEPOINT PARTNERS LP**

Per: (signed) "Kirstin McTaggart"

Name: Kirstin McTaggart

Title: Partner, CAO/CCO