

# ALSTON & BIRD L.L.P.

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September 1, 2015

VIA EMAIL

Josephine Tao, Esq.  
Assistant Director  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Greenbacker Renewable Energy Company LLC  
Request for Exemption under Rule 102(e) of Regulation M

Dear Ms. Tao:

On behalf of Greenbacker Renewable Energy Company LLC, a Delaware limited liability company (the "Company"), we respectfully request that the Division of Trading and Markets (the "Division"), pursuant to the authority delegated to it by the Securities and Exchange Commission (the "Commission"), grant the Company an exemption from the prohibitions of Rule 102(a) of Regulation M promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to repurchases by the Company of its shares under its proposed share repurchase plan in accordance with the terms detailed below, under the authority provided in Rule 102(e) of Regulation M.

## **The Company**

The Company was formed in the state of Delaware in December 2012 and seeks to generate returns for its members by acquiring and managing income-generating renewable energy and energy efficiency projects, and other energy-related businesses, as well as financing the construction and operation of such projects and businesses. The Company commenced operations on April 25, 2014 and currently has about \$36,962,260 in renewable energy assets.

On December 28, 2011, the Company filed a registration statement (File No. 333-178786-01) under the Securities Act of 1933, as amended (the "Securities Act"), which was declared effective on August 7, 2013, with respect to up to \$1,500,000,000 in shares of the Company's limited liability interests, consisting of up to \$1,250,000,000 of shares in the Company's primary offering and up to \$250,000,000 of shares pursuant to the Company's distribution reinvestment plan (the "Distribution Reinvestment Plan"). The Company is publicly

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offering three classes of shares - Class A shares, Class C shares and Class I shares - in any combination with a dollar value of up to the maximum offering amount. The Company has similarities to non-listed Real Estate Investment Trusts (“REITs”) and business development companies (“BDCs”) in that it offers investment opportunities in alternative assets, which are held for investment purposes and the investments themselves are not actively managed by the Company. Also similar to REITs and BDCs, the Company has a defined investment strategy implemented by its advisor, Greenbacker Capital Management LLC (the “Advisor” or “GCM”), whose investment committee approves all investments by the Company. In addition, the Company has a governance structure similar to those of REITs and BDCs, which includes a board of directors, as well as an audit committee, nominating committee and corporate governance committee. Finally, similar to non-listed REITs, the Company is not listed on a national securities exchange and the primary source of liquidity for investors in the Company’s shares is through the Company’s share repurchase program.

The Company is engaged in a continuous offering in order to raise proceeds to implement its investment strategy. The continuous offering provides a maximum number of potential investors with the opportunity to participate in the offering and provides the Company with the opportunity to offer shares up to the maximum approved under the Company’s registration statement. The shares will be offered on a continuous basis until the earlier of when the full amount of shares registered under the registered statement have been sold or August 7, 2016. However, if the Company files another registration statement before August 7, 2016, the shares will be offered until the earlier of February 3, 2017 or 180 days following the effective date of the subsequent registration statement.

The distribution of shares will be conducted on a “best efforts” basis by the dealer manager. Investors who wish to participate in the offering must meet certain suitability standards based on net worth and income. Members must make an initial purchase of at least \$2,000 and any additional purchases of the Company’s shares must be in amounts of at least \$500. The purchase price per share to be paid by each member will be equal to the price that is in effect on the date he or she submits a completed subscription agreement to the dealer manager. GCM holds 21,237 Class A shares as of June 30, 2015.

The Company intends to authorize and declare distributions quarterly and pay them on a monthly basis, subject to the discretion of the board of directors. Distributions will be made on all classes of shares and at the same time. A member may elect to reinvest its cash distributions received from the Company in additional shares via the Distribution Reinvestment Plan. Since October 2014, the Company has paid distributions on a monthly basis.

The Company’s shares currently are not listed on any national securities exchange, nor are such shares the subject of bona fide quotes on any inter-dealer quotation system or electronic communications network. Currently, no secondary trading market exists for the Company’s shares, and the Company anticipates that, outside of exploring a potential liquidity event, no such market will develop in the future. The Company anticipates that a listing or quotation of its shares will not occur unless and until the Company considers various forms of liquidity events, which the Company intends to explore within five years following the completion of its offering

stage. If the Company has not conducted a public offering in any continuous three-year period, the Company will consider its offering stage to be complete as of the termination date of its most recent public equity offering. Meanwhile, the Company wishes to provide its members with limited liquidity with respect to their shares pursuant to its proposed repurchase plan, as described below.

### **Share Repurchase Plan**

In order to provide limited liquidity to its members with respect to their purchase of the Company's shares, the Company intends to adopt a share repurchase plan as described in the Company's registration statement, subject to certain modifications as discussed herein (the "Repurchase Plan"). The Repurchase Plan provides that the Company is permitted to commence repurchases beginning 12 months after meeting the minimum offering requirement, which required a minimum of \$2,000,000 in gross offering proceeds by August 7, 2014. The minimum offering requirement was satisfied on March 28, 2014. The Company has disclosed a form of its share repurchase plan in its registration statement and will, if granted the relief requested herein, file a prospectus supplement to provide additional detail on the Repurchase Plan, including a one-year minimum holding requirement and the ability of members to withdraw repurchase requests. In addition, the Company will disclose that its role in the Repurchase Plan is solely ministerial and that it will fully disclose the terms of any modifications to the Repurchase Plan.

### **Summary of Terms of the Repurchase Plan**

Pursuant to the Repurchase Plan, members who have held shares for a minimum of one year may sell back those shares to the Company on a quarterly basis. As described in the Company's prospectus, the shares will be repurchased at a price equal to the then-current offering price less the selling commissions and dealer manager fees associated with that class of shares. The method of calculating these commissions and fees and their current values are set forth in the Company's prospectus. Members may request that the Company repurchase all of the shares that they own, but if a member presents fewer than all of his, her or its shares for repurchase then, he, she or it must present at least 25% of such member's shares for repurchase and maintain a minimum balance of \$2,000 worth of shares following the request for repurchase.

Under the Repurchase Plan, the Company can repurchase no more than 5% of the weighted average number of its outstanding shares in any 12-month period. In addition, the Company will limit its repurchases in each fiscal quarter to 1.25% of the weighted average number of its shares outstanding in the prior four fiscal quarters. Unless the Company's board of directors determines otherwise, the Company will limit the number of shares to be repurchased during any calendar year to the number of shares sold under its Distribution Reinvestment Plan. At the discretion of the Company's board of directors, the Company may also use cash on hand, cash available from borrowings and cash from liquidation of investments as of the end of the applicable period to repurchase shares.

If the number of shares submitted to the Company for repurchase exceeds the number of shares the Company can repurchase in a particular quarter, the Company will repurchase shares

on a pro rata basis for such quarter, rounded to the nearest whole share, based upon the total number of shares for which repurchase was requested, and the total funds available for repurchase.

Any repurchase requests made by the Company's directors, officers and their affiliates will be subject to the limitations in the Repurchase Plan. In addition, the Company's directors, officers and affiliates may not redeem any shares until the Company has raised \$100,000,000 in offering proceeds in the Company's primary offering, and GCM will not offer its shares for repurchase as long as it remains the Company's advisor.

In certain circumstances, the Company may redeem shares earlier than the adoption date of the Repurchase Plan upon the request of an estate, heir or beneficiary of a deceased member, a "qualifying disability" or "determination of incompetence." The request for redemption must be made within 180 days of the event giving rise to the special circumstance and the repurchase price will be the offering price less the selling commissions and dealer manager fees associated with the applicable share class immediately following the date of the death or disability of such member.

The Company's board of directors has the right to suspend, amend or terminate the Repurchase Plan to the extent that it determines it is in the Company's best interest to do so. The Company will promptly notify its members of any changes to the Repurchase Plan, including any suspension, amendment or termination of it. Moreover, the Repurchase Plan will terminate on the date that the Company's shares are listed on a national securities exchange or a secondary trading market for the shares otherwise develops.

#### Determination of NAV; Pricing of Share Repurchases

Net asset value ("NAV") is computed based on the fair value of the Company's assets, which is determined by the Advisor on a quarterly basis in accordance with Accounting Standards Codification Topic 820, Fair Value Measurements and Disclosures ("ASC 820"). ASC 820 is a widely accepted accounting standard under U.S. generally accepted accounting principles that defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles and requires certain disclosures about fair value measurements. The Advisor's report regarding its NAV determination and methodology is reviewed and approved by the Company's audit committee and board of directors on a quarterly basis and is reviewed by the Company's independent auditors on a quarterly basis and audited by the Company's independent auditors as part of its annual audit. If the Advisor determines that significant changes in the valuation methodology has occurred in between quarterly reviews, it will promptly prepare and present its recommendation on proposed changes to the valuation methodology to the Company's board of directors and audit committee. The Company disclosed in its prospectus the original valuation methodology and will disclose in a prospectus supplement any material changes to the Advisor's valuation methodology prior to their implementation. In addition, beginning with the quarter ending March 31, 2015, each quarter the value of one-fourth of the Company's assets that the Company has owned for at least six months is reviewed by an independent valuation firm on a rotating basis. Accordingly, each of the Company's investments

would be evaluated by an independent valuation firm at least once a year. The independent valuation firm uses publicly available information and information provided by the Advisor to review the Advisor's determination of fair value of the assets using certain limited procedures, prepare a report to the Advisor's management and provide an opinion of the carrying value of the assets. NAV has not changed since it was initially calculated by the Advisor, subject to the oversight of the Company's board of directors, on June 30, 2014, which was the first full fiscal quarter after the minimum offering requirement was satisfied.

The offering price of each share consists of NAV per share plus selling commissions and dealer manager fees, which are set at a fixed percentage of the offering price depending on the share class, and organization and offering expenses, which have been calculated as a percentage of gross offering proceeds. For example, the initial offering price of each Class A share is \$10.00, which is equivalent to a NAV per share of \$8.50 plus selling commissions fixed at 7% of the offering price per share (\$0.70) and a dealer manager fee set at 2.75% of the offering price per share (\$0.275). The remaining \$0.525 of the offering price per share consists of organization and offering expenses. With respect to the Class C shares, a distribution fee set at 0.8% of NAV is also included in the offering price.

Since the offering price for each class of shares consists of the *NAV per share plus* selling commissions and dealer manager fees, as applicable per share class, as well as organization and offering expenses and, under the Repurchase Plan, the Company will repurchase shares at a price equal to the then-current *offering price less* the selling commissions and dealer manager fees associated with such class of shares, the Company will repurchase shares at a price directly linked to the NAV per share. Consequently, the repurchase price under the Repurchase Plan will always be less than the offering price for newly issued shares but will be equal to the price at which shares are issued under the Dividend Reinvestment Plan because those shares will also not be subject to selling commissions and dealer manager fees. The Company will not deduct, however, from the repurchase price the organization and offering expenses associated with a member's shares, which are currently \$0.525 per share, and represent all expenses (other than the selling commissions and dealer manager fees) incurred in connection with the Company's qualification and the registration of its shares. In no event will the organization and offering expenses exceed an amount equal to 15% of the gross proceeds of the offering and the Distribution Reinvestment Plan.

### **Discussion**

Rule 102(a) of Regulation M, which is intended to preclude manipulative conduct by those with an interest in the outcome of a distribution, prohibits issuers and those affiliated with issuers, among others, from bidding for, purchasing or attempting to induce another to bid for or purchase, a security that is the subject of a then-current distribution. Rule 102(e) of Regulation M authorizes the Commission to exempt from the provisions of Rule 102 any transaction or series of transactions, either unconditionally or subject to specified terms and conditions.

The Company respectfully requests that the Division, pursuant to the authority delegated to it by the Commission, grant to the Company an exemption under Rule 102(e) of Regulation M

to permit it to effect share repurchases under its proposed Repurchase Plan during its offering, considering that such repurchases will not be actively solicited by the Company and will not be made with the purpose of trading in the Company's shares. Repurchases under the Repurchase Plan should not have the effect of manipulating or raising the price of the Company's shares since the repurchase price will be a price that is less than the offering price, and the price at which the Company both offers *and* repurchases shares is directly and mechanically linked to NAV. Moreover, the Company may repurchase only a limited amount of shares in each quarter and any 12-month period. Since no public secondary trading market for the Company's shares currently exists and the Company does not expect a secondary trading market to develop outside of the Company exploring a potential liquidity event within five years following the completion of its offering stage, the sole purpose of the Repurchase Plan is to provide its members with the ability to liquidate a portion of their shares in the Company while no trading market exists.

Allowing the Company to effect repurchases under the Repurchase Plan during the offering should not increase the potential for manipulation of the market for the Company's shares because the repurchase price will be fixed at an amount equal to the then-current offering price less the selling commissions and dealer manager fees associated with that class of shares. Because the repurchase price will be less than, and fixed in relation to, the offering price of the Company's shares, there should be virtually no risk that the market will be conditioned or stimulated by such repurchases. In addition, both the offering price and repurchase price are directly tied to NAV, and adjusted to account for fees and expenses, as described above, which, except for organization and offering expenses, are calculated based on set percentages. Furthermore, the amount of shares that may be repurchased by the Company under the Repurchase Plan is limited in three ways: (i) on an annual basis, to 5% of the Company's weighted average number of outstanding shares in any 12-month period, (ii) on a quarterly basis, to 1.25% of the weighted average number of shares outstanding in the prior four fiscal quarters, and (iii) during any calendar year, to the number of shares sold under the Distribution Reinvestment Plan, unless the Company's board of directors determines otherwise. The Repurchase Plan provides that if the Company cannot repurchase all shares presented in any quarter because requests for repurchase exceed any of the foregoing limitations, the Company will accept requests on a pro rata basis.

Moreover, the Company does not and will not actively solicit participation in the Repurchase Plan. The Company makes its members aware of the Repurchase Plan at the time they make their investment by means of a description in the Company's prospectus or supplement thereto. Thus, those members who present their shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company or the Advisor. The role of the Company in effectuating the repurchases under the Repurchase Plan will be solely ministerial and facilitate the members' liquidation of their shares. Further, the Repurchase Plan will terminate if the Company's shares are listed on a national securities exchange, are included for quotation in a national securities market or if a secondary trading market for the shares otherwise develops.

The Company believes its Repurchase Plan satisfies the conditions set forth in the Alston & Bird LLP class exemptive letter (October 22, 2007) granting relief to permit non-listed REITs

to redeem their common stock under an established share repurchase program while in a distribution of their common stock. Although the Company is not a REIT, it believes that its Repurchase Plan is substantially similar to the non-listed REIT share repurchase programs granted relief by the Division and is similarly designed to provide liquidity to investors. Specifically, the Repurchase Plan meets the following conditions for obtaining relief under the class exemptive letter:

- There is no trading market for the Company's shares;
- The Company will terminate its share repurchase program during the distribution of its shares in the event that a secondary market for the shares develops;
- The Company will purchase shares under the Repurchase Plan at a price that does not exceed the then-current offering price of the Company's shares;
- The Company will fully disclose the terms of the Repurchase Plan in its prospectus; and
- Except as otherwise provided in the class exemptive letter, the Company shall comply with Regulation M.

In addition, the Company has reviewed exemptive relief request letters of REITs and non-REITs and believes that its Repurchase Plan is substantially similar to the repurchase programs of these issuers, including: (i) TriLinc Global Impact Fund, LLC (March 20, 2013), (ii) Hines Real Estate Investment Trust, Inc. (September 7, 2006), and (iii) Behringer Harvard REIT I, Behringer Harvard Mid-Term Value Enhancement Fund I LP, and Behringer Harvard Short-Term Opportunity Fund I LP (October 26, 2004). Specifically, the Company's Repurchase Plan contains the following characteristics that were noted in Commission's letters granting relief to these issuers: (i) members must hold their shares for at least one year to participate in the Repurchase Plan, (ii) there is no trading market for the shares, (iii) the Company will terminate its Repurchase Plan should a secondary trading market for its shares develop, (iv) during an offering, the shares will be repurchased at a price that is equal to the then-current offering price less the selling commissions and dealer manager fees associated with that class of shares, (v) the number of shares that may be repurchased under the Repurchase Plan will not exceed 5% of the Company's weighted average number of outstanding shares during any 12-month period, (vi) the terms of the Repurchase Plan will be fully disclosed in the Company's prospectus, (vii) if the Company cannot repurchase all shares presented for repurchase in a quarter it will accept repurchase requests on a pro rata basis, and (viii) repurchases will be made on a quarterly basis.

The Company believes the Repurchase Plan is also substantially similar to the repurchase plans of certain non-traded BDCs which were granted exemptive relief under Regulation M, including Business Development Corporation of America (August 8, 2012) and FS Investment Corporation II (June 7, 2012). In addition, the Company believes the terms of the Repurchase Plan are consistent with the conditions for the limited exemption from Rule 102(a) of Regulation M granted to certain BDCs in the class exemptive order dated December 19, 2013.

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In particular, consistent with both the repurchase plans of specific BDCs granted exemptive relief and the conditions set forth in the class exemptive letter, (i) there is no trading market for the Company's shares, (ii) the Company will terminate the Repurchase Plan should a secondary trading market for its shares develop, (iii) the Company will repurchase its shares at a price that does not exceed the then-current offering price, (iv) the terms of the Repurchase Plan will be fully disclosed in the Company's prospectus, and (v) the number of shares will not exceed, at any time during any 12-month period, 5% of the Company's weighted average number of outstanding shares. Notably, the repurchase limits set forth in the Repurchase Plan are more restrictive than the plans of the aforementioned REITs, non-REITs and BDCs granted exemptive relief because in addition to a 5% limit on the shares it may repurchase in any 12-month period, the Company's repurchases in a given quarter cannot exceed 1.25% of the weighted average number of shares outstanding in the prior four fiscal quarters.

For the foregoing reasons, on behalf of the Company, we respectfully request that the Division, pursuant to the authority delegated to it by the Commission, grant the Company an exemption from the prohibitions of Rule 102(a) of Regulation M for share repurchases under the Repurchase Plan, as proposed, during the course of an offering under the authority provided in Rule 102(e).

Please do not hesitate to contact me at 202-239-3463 or [dave.brown@alston.com](mailto:dave.brown@alston.com) if you have any questions or require any additional information regarding this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. A. Brown", with a long horizontal flourish extending to the right.

David A. Brown

cc: Richard Butt,  
Chief Financial Officer, Chief Investment Officer and Chief Compliance Officer  
Greenbacker Renewable Energy Company LLC