

March 27, 2024

Introduction

We respectfully make this supplemental submission in support of the original Tips, Complaints, and Referrals (“TCR”) submission we filed on January 18, 2023 (submission number 16739-856-127-314)¹ and in addition to the supplemental submissions we filed on August 11, 2023 (submission number 16917-761-996-917)² and November 6, 2023 (submission number 16992-975-116-215).³

This new submission is based on two recent material developments: (1) a civil action filed on February 28, 2024, by the Attorney General of the State of New York against defendants JBS USA Food Company and JBS USA Food Company Holdings⁴ and (2) a neutral industry watchdog’s removal of JBS’s designation as a company that had made a substantiated “net zero” commitment.

The allegations of this new civil action, as summarized below, are nearly identical to those contained in our original TCR submission. This new development, taken together with the evidence contained in our first and second supplemental submissions, bolsters the conclusion that the SEC staff should open a formal investigation into the company’s misconduct in the U.S. securities markets and ultimately bring an enforcement action to hold the company accountable for that misconduct.

And the decision by the Science-Based Targets Initiative to strike JBS from its list of companies that have made meaningful “net zero” commitments, also discussed below, constitutes further evidence that the company’s original claims were hollow to the point of being false and misleading.

The New York Attorney General’s Action

The Attorney General’s suit contains the following allegations, all of which track nearly identically those made in our original submission:

- JBS has “repeatedly assured the public and their consumers that they are taking substantial and definitive actions to reduce their greenhouse gas emissions and mitigate the impacts of their industrial agricultural practices on the environment.” (¶ 2.)

¹ For ease of reference, the original submission and supporting exhibits are available at: <https://www.dropbox.com/scl/fo/hf559h5q6ax5nj8ggy9pd/h?rlkey=uq317l6ublz84buznfyevc6sx&dl=0>

² For ease of reference, the first supplemental submission and supporting exhibits are available at: <https://www.dropbox.com/scl/fo/3s8dgv3yjhwpk2l72lzi6/h?rlkey=au5rfa3ddwxjrpqbenl7681y&dl=0>

³ For ease of reference, the original submission and supporting exhibits are available at: <https://www.dropbox.com/scl/fi/xlnno9b3fjfaf780jw2j/SEC-Supplemental-Submission-11.6.23.pdf?rlkey=3b71ijcviskpqs1qal00f13wz&dl=0>.

⁴ A copy of the Attorney General’s complaint is available at: <https://ag.ny.gov/sites/default/files/court-filings/jbs-complaint.pdf>.

- JBS “has made sweeping representations to consumers about its commitment to reducing its greenhouse gas emissions, claiming that it will be ‘Net Zero by 2040.’” (¶ 6.)
- JBS “has had no viable plan to meet its commitment to be ‘Net Zero by 2040.’” (¶7.)
- JBS “has admitted that it made its ‘Net Zero by 2040’ commitment without having calculated the vast majority of greenhouse gas emissions from its supply chain. Those supply chain emissions include emissions from deforestation in the Amazon and the resulting inability of that biomass to absorb and store greenhouse gases from the atmosphere.” (¶ 8.)
- Despite the formal industry admonitions cited in our first supplemental submission, JBS “has continued to make the same or similar claims to consumers, all the while emitting massive amounts of greenhouse gases to the atmosphere and continuing supply chain practices with outsized climate impacts, further contributing to climate change harms.” (¶ 11.)
- JBS “has repeatedly and persistently made unsubstantiated and misleading environmental marketing claims to New York consumers, even after NAD and the Review Board found such claims to be unsubstantiated and recommended that the JBS Group stop making them.” (¶ 12.)

Building upon these core allegations, the Attorney General’s suit provides substantial detail (¶¶ 18–157) to support its legal claims, which include (1) violation of General Business Law § 349 (Deceptive Acts or Practices); (2) violation of General Business Law § 350 (False Advertising); (3, 4 and 5) violations of Executive Law § 63(12) (“repeated or persistent fraudulent or illegal conduct”).

The Attorney General’s suit seeks injunctive relief to prevent JBS from repeating its “fraudulent, deceptive, and illegal acts,” disgorgement, civil penalties, and an independent audit.

SBTi’s Removal of JBS

In March 2024, it was revealed that JBS failed to secure validation from the Science-Based Targets Initiative (“SBTi”), which is the gold standard for corporate Net Zero target setting. JBS is now shown as “Commitment Removed” on the SBTi website, meaning that the company has been struck off the SBTi register. A screenshot documenting SBTi’s action is pasted here:

The screenshot shows the SBTi website interface for JBS. At the top, there are filters for 'COMPANY', 'NEAR-TERM TARGET', 'NET-ZERO TARGET', and 'ORGANIZATION TYPE'. Below these filters, the company name 'JBS' is displayed with a location 'Brazil, Latin America and the Caribbean'. Two buttons labeled 'COMMITMENT REMOVED' are visible. To the right, it says 'Company' and 'View less'. Below this, there are details: 'Organization type: Company', 'Sector: Food and Beverage Processing', 'Company temperature alignment: NA', and 'Business Ambition for 1.5°C commitment: ✓'. A 'DOWNLOAD ALL DATA' button is on the right. At the bottom, a table titled 'TARGETS / COMMITMENTS' is shown.

ACTION	STATUS	TARGET	SCOPE	TARGET CLASSIFICATION	BASE YEAR	TARGET YEAR	DATE PUBLISHED
Commitment	Removed	NA	NA	NA	NA	NA	2021-03-01

SBTi assesses the Net Zero plans of thousands of companies worldwide to determine if they are credible and ambitious enough to support combatting climate change.⁵ Given that JBS has persistently failed to produce any substantive plans to support its claims of reaching Net Zero by 2040, SBTi has now acted decisively to withdraw its original stamp of approval on JBS's Net Zero commitment.

SBTi's decision to remove JBS from this widely watched and authoritative list was reached because JBS did not produce a relevant plan to demonstrate the necessary reduction in its emissions using the Forest, Land and Agriculture methodology,⁶ which requires companies to reduce 72% of greenhouse gas emissions no later than 2050.⁷

Given that JBS Global CEO Gilberto Tomazoni stated, "the beef business will continue to grow"⁸ and considering JBS's F-4 registration statement presents a significant growth strategy, achieving SBTi net zero validation for a company with greenhouse gas emissions comparable to those of Spain and with planned production increases was deemed impossible.

Conclusion

We respectfully submit that the facts underlying JBS's Sustainability-Linked Bond sales, and presumably its planned offering of common shares to U.S. equity investors on the New York Stock Exchange, make this an ideal candidate for a full investigation and ultimately an enforcement action to protect our markets from wrongdoers such as JBS, which we believe has violated the antifraud provisions of the federal securities laws, including but not limited to Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; Section 13(a) of the Exchange Act and Rules 13a-1, 13a-16 and 12b-20 thereunder; as well as Section 17(a) of the Securities Act of 1933 ("Securities Act").

This supplemental submission highlights that, much like JBS misled investors by omitting crucial information during the \$3.2 billion Sustainability-Linked Bond offerings, by blithely ignoring industry admonitions to cease its false climate claims and by its CEO making false statements concerning climate and deforestation in public settings, the company has also persistently provided to consumers and industry watchdogs inaccurate and misleading information regarding its climate impact and policies. Taken together, the substantial evidence of JBS's persistent fraudulent conduct plainly merits a formal investigation and—almost certainly—an enforcement action.

We will be happy to share any additional information that you believe might be helpful as you assess this matter, including by participating in an interview at your convenience.

⁵ The organization's net-zero standard is explained in general terms at: <https://sciencebasedtargets.org/net-zero> and in more detail at: <https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>.

⁶ <https://www.just-food.com/news/jbs-struck-off-sbti-climate-commitment-register/>.

⁷ <https://sciencebasedtargets.org/sectors/forest-land-and-agriculture>.

⁸ <https://www.bloomberg.com/news/articles/2024-02-22/jbs-jbsay-expects-us-listing-to-be-delayed-as-it-widens-voting-on-deal>.