JBS S.A. dual listing:

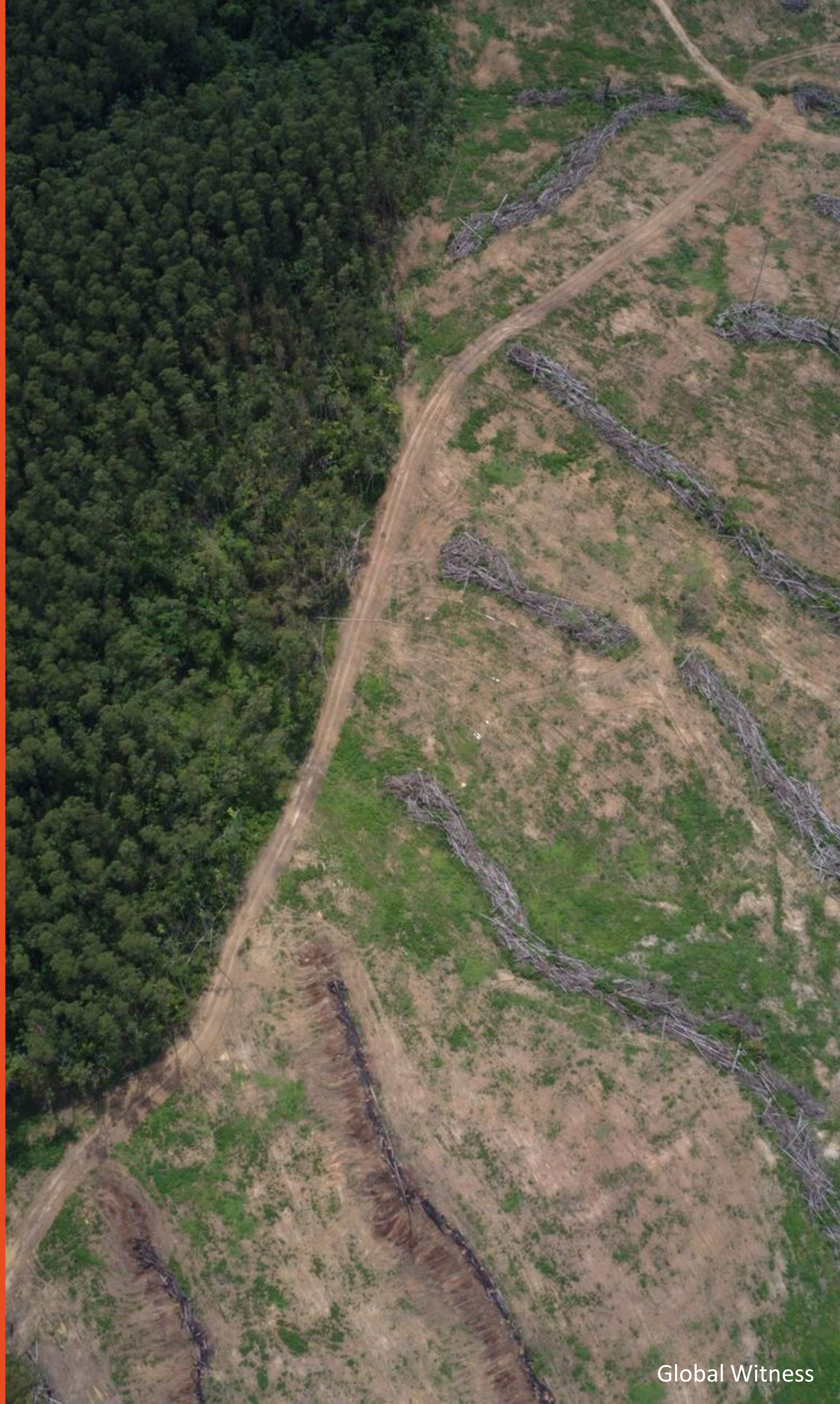
Risks to investors, people and planet

October 2024

Image: Global Witness

JBS S.A. is attempting to dual list its shares on the New York Stock Exchange.

We wrote to JBS shareholders in September 2023 about this deal. **JBS has since amended its application to the SEC (Amendment No.3).** This presentation explains **what's changed** and what financial service providers – including investors, underwriters, asset managers, advisers and lenders – **need to know about the negative impacts of the deal**.

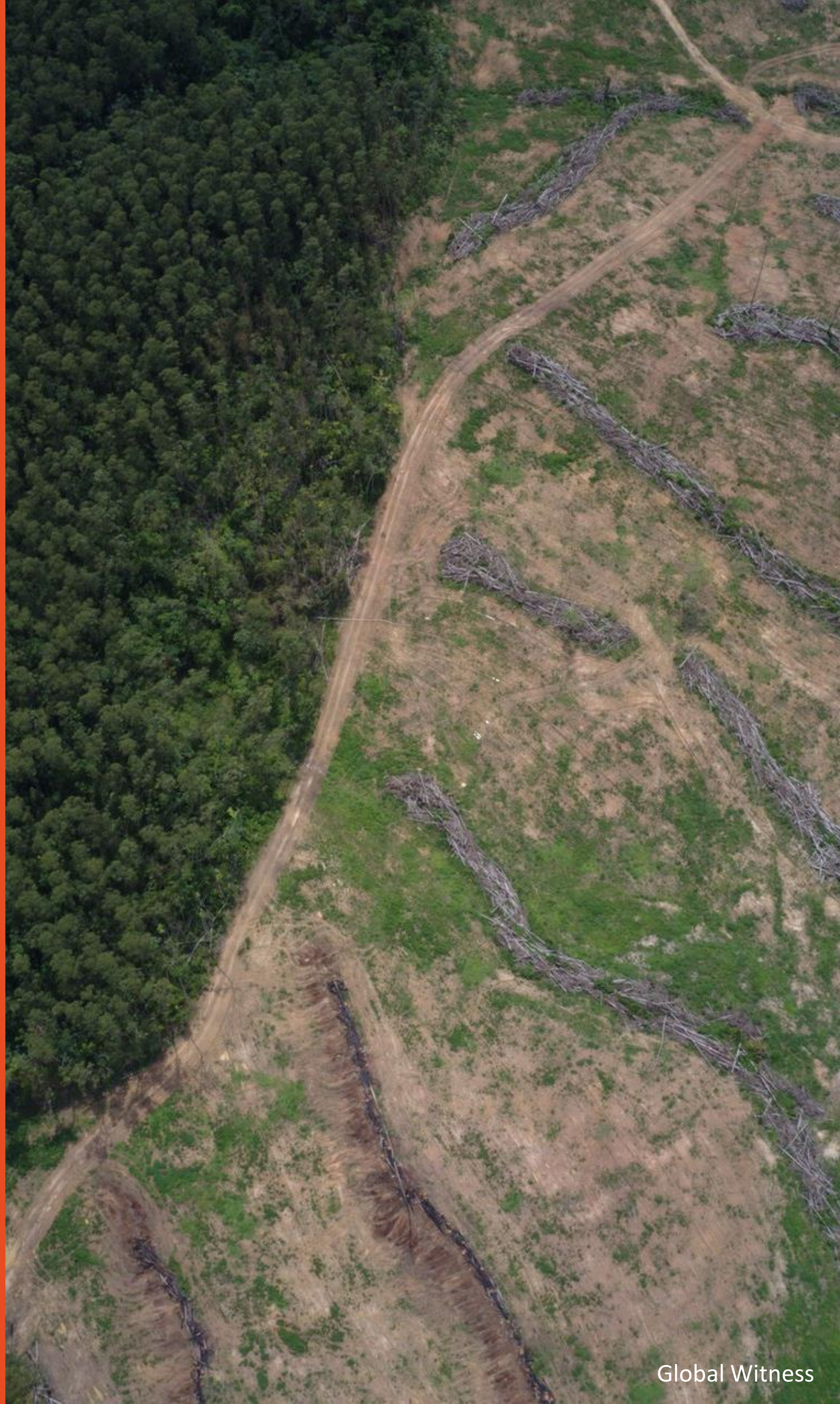


What’s changed and what you need to know:

1. The Batista family will emerge with 84.85% of voting rights at the point of listing, up on their current 48.48% voting entitlement (as of 15 June 2024), severely limiting any minority shareholder power.

2. JBS does not have a credible plan to address their vast greenhouse gas emissions or long-standing risk of further deforestation and human rights abuses

3. JBS’s supply chain is associated with decades of alleged human rights abuses, deforestation and land grabs against Indigenous peoples and local communities.



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What you need to know, *cont*:

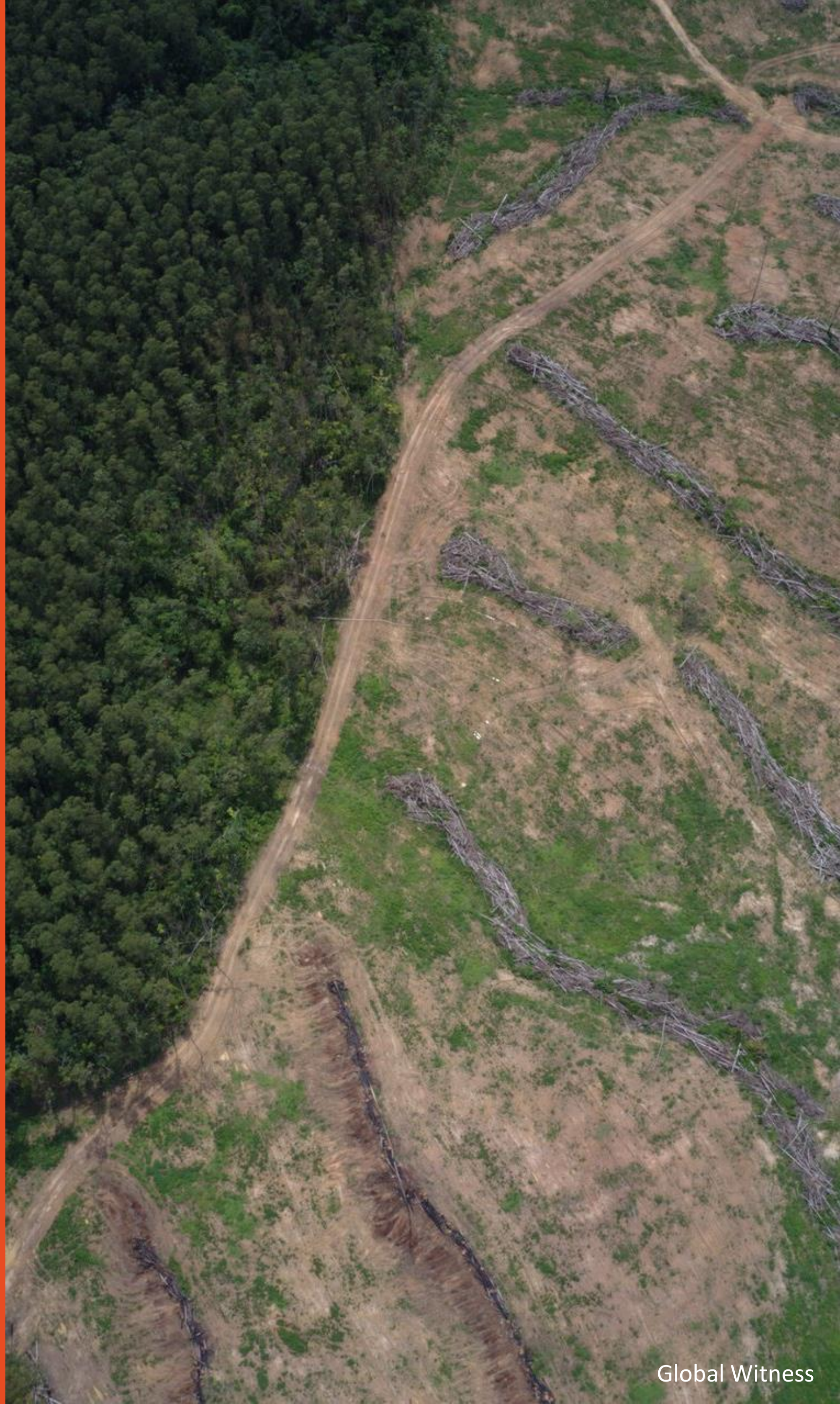
4. **JBS has removed its reference to a 'zero tolerance to… invasion of protected areas such as indigenous lands or environmental conservation areas' in its latest application**

5. JBS's liabilities from criminal, civil and other legal proceedings rose to $3.6 billion, up from $1.7 billion as of July 2023 when the original prospectus was filed (F-4, p.142)

6. JBS USA is being sued in the State of New York for an allegedly 'unsubstantiated and misleading' net zero 2040 target

7. New evidence again connects JBS's supply chain to deforestation and the violation of indigenous rights in its supply chain in Brazil (link), (link)

8. JBS S.A. was delisted by the Science-Based Targets initiative (SBTi) for failing to submit a climate plan



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What you need to know, *cont*:

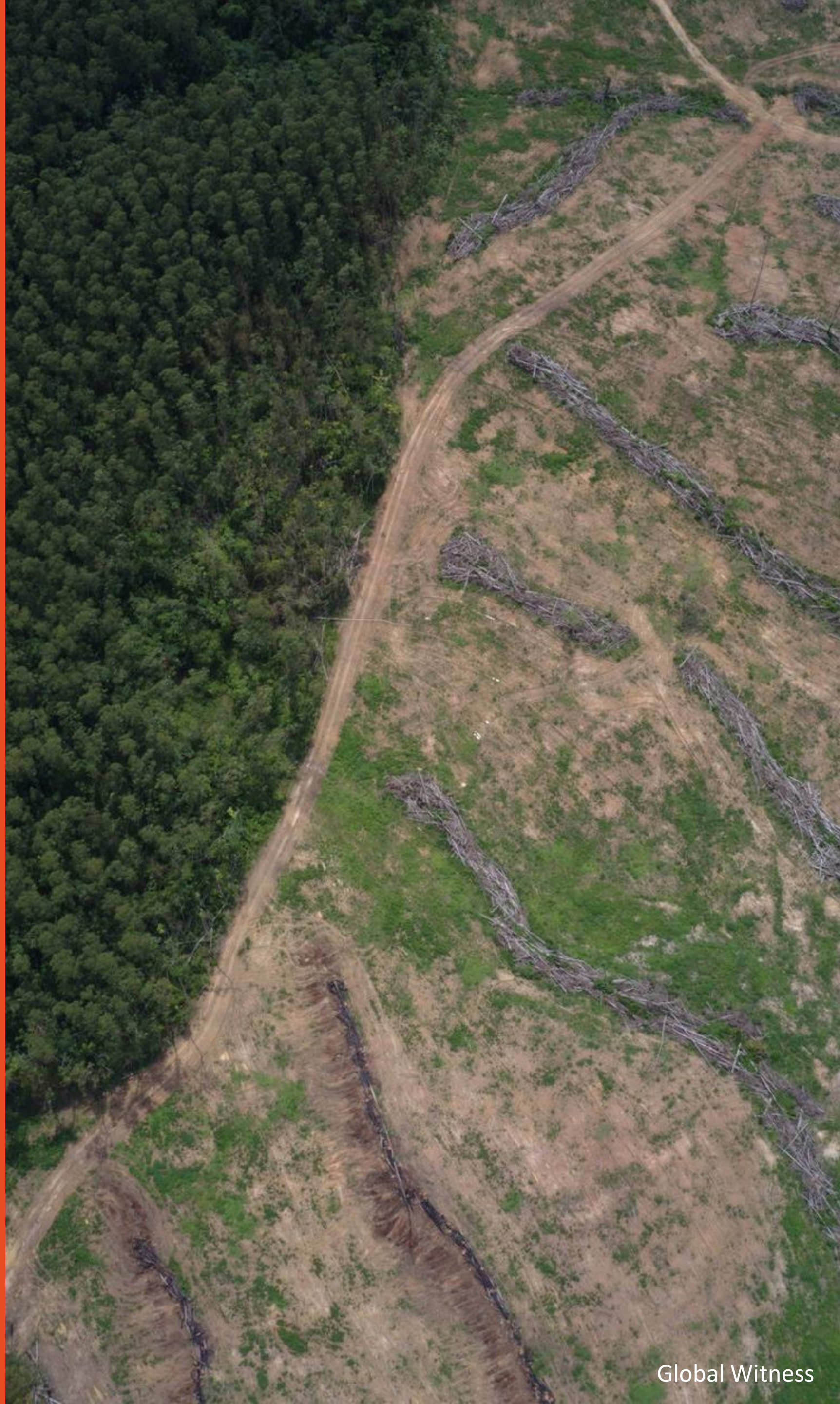
9. ‘Controversial’ figureheads Joesley and Wesley Batista – who left the company’s management after a 2017 corruption scandal– returned to the board of JBS S.A.

10. Lawmakers in the US and UK have publicly urged the SEC to review the listing due to ESG concerns (link), (link), (link)

11. There has been significant adverse media against the transaction

12. JBS will likely be required to adopt a 1.5c-aligned transition plan as early as 2027 under the European Corporate Sustainability Due Diligence Directive (F-4, p.127)

13. JBS will be required to report its ESG impact under the Corporate Sustainability Reporting Directive (CSRD) as soon as FY2025 (F-4, p.55)



What are we asking you to do?

1. Suspend support for, and further investment in, JBS or its subsidiaries until they provide a credible plan to address their emissions and risk of deforestation and human rights abuses.

2. Raise awareness – including through advisory services – of the environmental, social, and governance risks associated with JBS's supply chain

3. Existing investors should identify and provide redress and remedy to communities affected by the financing of JBS's operations, where relevant

4. Vote against the transaction at JBS S.A.'s EGM, if you are a shareholder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About JBS S.A.

the world’s largest meat company

Image: Global Witn

- JBS S.A. has a vast network of subsidiaries including household names like Pilgrim’s Pride.
- The founding Batista family own 48.48% of the voting entitlement in the company (as of 15 June 2024).
- S&P downgraded JBS’s outlook to “negative” in July 2023, citing “subdued demand” and “industry obstacles”.
- There is a one in three chance of an S&P downgrade.
- JBS updated its F-4 application for a dual listing on the New York Stock Exchange with the SEC on 24 June 2024 - all references in this presentation are to that dated version.
- The company reportedly received $3.5 billion in fines for its involvement in multiple environmental, deforestation and corruption scandals between 2015-2022.

About JBS S.A.'s climate and human rights impact

JBS is the subject of an ongoing SEC whistleblower complaint which alleges the company sold billions in "fraudulent" Sustainability-Linked Bonds in 2021, tied to net zero emissions reduction targets for which there is no credible plan (link).

- JBS's supply chain is associated with decades of alleged human rights abuses, deforestation and land grabs against Indigenous peoples and local communities.
- JBS's F-4 filing admits **ongoing civil, tax and labour proceedings could cost $3.6 billion to settle** (F-4, p.142) – an increase on their original $1.7 billion liability estimate.
- The US National Advertising Division (NAD) recommended JBS USA Holdings discontinue its net zero emissions by 2040 claim, due to a lack of a credible emissions reductions plan.
- In 2022, a Bloomberg investigation concluded JBS's supply chain is one of "the biggest drivers of Amazon deforestation."
- Chain Reaction Research conservatively estimated that JBS's total deforestation footprint since 2008 in Brazil may be as high as 200,000 hectares (ha) in its direct supply chain and 1.5 million ha in its indirect supply chain.

About JBS S.A.'s estimated emissions:

JBS emitted an estimated 287.9 million tonnes CO2-equivalent in 2021, exceeding the annual emissions of Spain according to the Institute for Agriculture and Trade Policy (IATP) and Changing Markets.

The company's estimated methane emissions exceed the livestock methane emissions of France, Germany, Canada and New Zealand combined. This is significantly higher than estimations for its sectoral competitors.

An estimated 97% of the company's GHG emissions come from its indirect supply chain - but the company has no credible Scope 3 target.

JBS has no methane emissions reduction target either. Their own emissions estimates differ.

The company does not mention its controversial net zero Scope 1 and 2 target in its SEC F-4 filing, which is subject of an ongoing SEC whistle-blower complaint.

The company's true emissions are difficult to estimate, because it does not publish the number of animals it slaughters each year.

The proposed dual listing transaction

Image: Karolina Grabowska

- JBS S.A. has applied to dual list its shares as a “foreign private issuer” on the New York Stock Exchange (NYSE), under a new Dutch parent company (“JBS N.V.”)
- JBS S.A. is already public on the São Paulo Stock Exchange (B3).
- If dual listed, the Batista family will transfer all their existing shares in JBS S.A. – currently held via their investment companies J&F Investimentos and FIP Formosa – to a new Luxembourg vehicle known as “LuxCo”.
- Multiple NGOs have written to the U.S. SEC to oppose the F-4 dual listing application.
- There has been significant adverse media against the transaction.
- JBS S.A. aimed to complete the listing by end December 2023 but failed.

The dual listing will create a new dual class share system

- According to the F-4 filing, the company intends to adopt a new dual class share structure:
    - Class A share – one vote per share
    - Class B share – ten votes per share
- Only the Batista family may convert 100% of their Class A Shares to Class B shares.
- Other shareholders may only convert 55% of their holdings to Class B.
- This will overwhelmingly dilute voting rights for existing and future minority shareholders at the point of listing.
- Shares listed on NYSE will be Class A only.
- Class B shares will not be listed on any exchange, which may disincentivise Class B conversion (see slide 6).
- Such low proportionate voting rights may affect the retail value of the Class A shares and therefore potentially reduce liquidity.

The dual listing has attracted significant adverse media…

… JBS’s last proper attempt to dual list in 2017 failed due to the Batista family’s involvement in “the largest corruption inquiry in history” in Brazil (link)

Bloomberg

Opinion

Lara Williams, Columnist

Meatpacker JBS Listing in NYC Would Be an ESG Nightmare

The world’s largest meatpacking company wants to list in New York. There are lots of reasons to be concerned.

Gift this article

Weigh it out. *Source: Bloomberg*

Source link

REUTERS

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Environmental activists pressure US regulators to halt JBS listing

By **Ana Mano** and **Tom Polansek**

August 23, 2023 9:57 PM GMT+1 · Updated 19 days ago

Aa

[1/5] Employees prepare salted meat which will be dried ... then packed at a plant of JBS S.A, the world's largest ...oducer, in Santana de Parnaiba, Brazil December ...7. REUTERS/Paulo *Acquire Lice*... **Read more**

Source link

Governance risks: is this a family power grab?

The Batista family will emerge from this deal with 84.85% of the aggregate voting power in JBS N.V.

This is a major increase on their current 48.48% voting entitlement (as of June 2024).

JBS claims the dual listing will "enhance transparency and strengthen corporate governance", but this is questionable, because the Batista family will control 84.85% of voting rights immediately after listing according to the company's latest SEC filing.

The Batista's are not reliable controlling shareholders of the company:

- In 2017, J&F Investimentos agreed to pay a record breaking $3.2 billion in penalties in Brazil for its role in the "the largest corruption inquiry in history".
- In 2020, J&F pleaded guilty to criminal conspiracy to violate the US Foreign and Corrupt Practices Act (FCPA), agreeing to pay more than $256 million.
- In 2020, the SEC cited the Batista brothers' "**profound failure to exercise good corporate governance**" and "**brazen misconduct**" issuing a further $27 million in fines for related bribery offences.

Governance risk: Minority shareholders may be disenfranchised

- As a result, this dual listing deal will leave existing and future minority shareholders with **very little opportunity for real influence** over company decision making on issues including:
    - Environmental and social impact
    - Distribution of profits (JBS says it will no longer follow Brazilian law on the distribution of dividends)
    - Appointing the board of directors
    - Mergers, acquisitions or decisions to dissolve JBS N.V.
    - Staff remuneration
- JBS says they "cannot assure" minority shareholders that the controlling family shareholders will address financial and other conflicts of interest "in an impartial manner", "even though such transactions may involve increased risks to us or the holders of our common shares." (F-4, p.53)
- JBS Chief Financial Officer Guilherme Cavalcanti has confirmed the company has no publicly disclosed plans to issue new shares or raise capital for M&A or debt deleveraging after the NYSE listing, which raises questions as to whether the primary purpose of the dual listing transaction is to deliver near total control for the Batista family.

Dual class share conversion scenarios:

How the Batista family could emerge with up to 90% voting power

Assuming the shareholding structure of JBS S.A. immediately prior to the Proposed Transaction will be the same as its shareholding structure as of June 15, 2024

See F-4, p.208-209 for original tables

Scenario 1: None of the Eligible Shareholders request to convert their JBS N.V. Class A Common Shares into JBS N.V. Class B Common Shares during the Conversion Period

1.a. LuxCo requests to convert <u>all</u> of its JBS N.V. Class A Common Shares into JBS N.V. Class B Common Shares:

	Class A Common Shares		Class B Common Shares		Total Total voting power (as of June 2024)		Voting power after dual listing
LuxCo (100% owned by the Batistas)	-------	------	537,709,949	100.00%	537,709,949	48.83%	**90.40%**
BNDESPar	230,830,550	40.40%	--------	--------	230,830,550	20.81%	3.88%
Other shareholders	340,517,686	59.50%	--------	--------	340,517,686	30.36%	5.72%

1.b. LuxCo requests to convert <u>none</u> of its JBS N.V. Class A Common Shares into JBS N.V. Class B Common Shares:

	Class A Common Shares		Class B Common Shares		Total voting power (as of June 2024)		Voting power after dual listing
LuxCo (100% owned by the Batistas)	241,969,477	29.75%	295,740,472	100.00%	537,709,949	48.84%	**84.85%**
BNDESPar	230,830,550	28.38%	--------	--------	230,830,550	20.81%	6.12%
Other shareholders	340,517,686	41.87%	--------	--------	340,517,686	30.70%	9.03%

Scenario 2: All Eligible Shareholders request to convert 100% of their JBS N.V. Class A Common Shares into JBS N.V. Class B Common Shares *AND* LuxCo requests to convert <u>all</u> of its JBS N.V. Class A Common Shares into JBS N.V. Class B Common Shares (with a minimum float of 20% applied):

	Class A Common Shares		Class B Common Shares		Total voting power (as of June 2024)		Voting power after dual listing
LuxCo (100% owned by the Batistas)	--------	--------	537,709,949	60.60%	537,709,949	48.48%	59.13%
Other shareholders (including BNDESPar)	221,811,637	100%	349,536,599	39.4%	571,348,236	51.51%	40.87%

Governance risks: potential regulatory arbitrage, opaque corporate structure

- JBS N.V. will be a public limited liability parent company (naamloze vennootschap) in the Netherlands (F-4, p.1.)

- But all JBS S.A. assets, employees, physical infrastructure and financial flows will remain the same *in practice* according to the company.

- The Dutch government says it is cracking down on such Dutch “letterbox” companies - which undertake no independent economic activity.

- **The proposed new company structure may result in regulatory arbitrage and related risks to shareholders:**
    - Dutch law may afford fewer shareholder protections than US law (F-4, p.37).
    - US court judgements are not de facto enforced or recognised in Dutch courts, according to the F-4 filing (p.39-40).
    - The Netherlands has been described as an emerging “front-runner” jurisdiction for climate-related civil litigation.
    - JBS acknowledges there will be significant strain on internal controls and additional costs caused by new compliance and reporting burdens related to US and other law (F-4, p.9).

Market access risks:
Deforestation-free supply chain laws

- Without major changes in the company's level of supply chain monitoring and traceability, JBS will struggle to comply with incoming EU and UK legislation when they enter into force.

Europe (including the UK) represented 9% of JBS's Q1 2024 revenue.

The US represented 49% of JBS's Q1 2024 revenue.

EU Deforestation-free Product Regulation (link)

- Companies must verify and certify that their products are free from all deforestation (legal and illegal), forest degradation and human rights abuses for placement on the EU market.
- Enters into force late 2024 onwards for large operators.
- Covers beef and leather, oil palm, rubber, soy, wood, coffee.
- Full traceability required in due diligence declarations: geolocation coordinates and timing of land raised/grown.
- Maximum fine of at least 4% of Union-wide turnover in the preceding year.

Schedule 17, UK Environment Act 2021 (link)

- Prohibits the import of illegal deforested commodities produced with violations of local "land use and ownership laws".
- Companies must operate a due diligence system and certify products illegal deforestation free.
- Must comply with human rights protections in land use and ownership laws.
- Commodity scope, scale of sanctions and date of entry into force to be announced through forthcoming secondary regulations.

New York Tropical Deforestation-Free Procurement Act (link)

- Passed New York Senate; retabled in New York State Assembly
- Seeks to end state and local government procurement driving tropical forest loss, degradation or abuse of Indigenous Peoples.
- Companies would be required to conduct due diligence to certify commodity or product is traceable and deforestation-free.
- Covers beef, palm oil, coffee, cocoa, wood pulp, paper and wood products (link).
- Penalty minimum $1000 or up to 30% of product value.

US FOREST Act (link)

- There is bipartisan support for new law prohibiting the import of commodities grown or produced on illegal deforested land, underpinned by due diligence declarations.
- Would establish a federal government procurement preference for zero deforestation products.
- Would amend the Tariff Act to make the laundering of the proceeds of illegal deforestation a financial crime.
- Would cover cattle, palm oil, soybeans, wood pulp, rubber and cocoa.

Market access risks:
Deforestation-free supply chain laws (cont)

- JBS admits it may not be able to comply with local laws governing environmental and labour standards related to the company's supply chain in its F-4 filing, exposing the company to penalties and legal risk

- JBS does not have full supply chain traceability over direct or indirect suppliers, as of October 2024.

- It will only become mandatory in January 2026 for all direct Brazil suppliers to join the JBS Livestock Transparency Platform and provide information on their indirect suppliers.

- JBS has missed multiple deforestation targets before. It has not presented a credible plan for how it will reach its current weak deforestation targets:
  - *Amazon*: 2023 target date for no-deforestation for direct suppliers, and 2025 for indirect suppliers (legal and illegal), in continued contravention of a 2008 legal agreement with prosecutors in Brazil until that time
  - *Cerrado*: 2025 target date for no illegal deforestation for direct and indirect suppliers
  - Eliminate all deforestation (legal and illegal) by 2030

Market access risks: Deforestation-free supply chain laws (cont)


Global Witness / Lunae Parracho

- JBS removed its reference to "zero tolerance to… invasion of protected areas such as indigenous lands or environmental conservation areas" in Amendment No.3 of its F-4
- But multiple reports show a pattern of deforestation and land grabs associated with the company's animal and feed supply chain (see link, link, link, link, link, link)
  - In February 2024, Global Witness found JBS, Marfrig and Minerva were linked to an area of deforestation bigger than Chicago in Mato Grosso state between 2018-2019, with the forest lost in the Cerrado savannah part of the state nearly five times higher than in the Amazon part of the state. JBS was linked to the most farms with deforestation in both biomes.
  - In May 2024, the Environmental Investigation Agency issued a new report tracking cattle raised illegally inside the Apyterewa Indigenous Territory – the most heavily deforested in the Brazilian Amazon – into the JBS supply chain, violating the company's agreements with Brazilian Federal prosecutors.
  - A December 2022 audit by Brazilian federal prosecutors concluded **more than one in six cows** – almost 94,000 head of cattle – of JBS's purchases in the Brazilian state of Pará were not compliant with the company's agreement with prosecutors between mid-2019-mid-2020, mostly due to illegal deforestation found in their *direct* supply chain.
  - Chain Reaction Research conservatively estimated that JBS's total deforestation footprint between 2008-2019 in Brazil may be as high as 200,000 hectares (ha) in its direct supply chain and 1.5 million ha in its indirect supply chain.

Market access risks: deforestation-free finance

- The UK and EU are conducting regulatory reviews of measures necessary to prevent the financing of companies conducting deforestation.
- Brazilian banking association Febraban – with 21 members including Bank of Brazil and BNDES - introduced self-regulation No. 026/2023 requiring member banks to ensure they only fund banks with no illegal deforestation in their supply chains by 2025.
- Several of multi-billion JBS's Sustainability-Linked Bond coupons will increase by 25 basis points if sustainability targets are not achieved (F-4, p.137).
- JBS has been placed on multiple investment exclusion or divestment lists since 2017, due to factors including unviable levels of risk, criminality and poor environmental performance, for example:

  1. The world's largest sovereign wealth fund in Norway divested from JBS in 2018 citing "an unacceptable risk that the company is responsible for gross corruption."
  2. In 2020, HSBC reportedly said JBS "has no vision, action plan, timeline, technology or solution" for monitoring whether the cattle it buys originate from farms involved in rainforest destruction.
  3. Nordea Asset Management reportedly divested from JBS "over its ties to farms involved in Amazon deforestation" in 2020.
  4. PFZW, the second largest Dutch pension fund, reportedly divested from its JBS bond holdings in 2021 citing "land use and biodiversity incidents".
  5. In March 2023, Aviva told Global Witness it considers JBS a 'red rated issuer', which prevents any further active investment in the company.

Market access risks: the global meat market

- New public policies related to agriculture, meat reduction and other climate-related are necessary for governments to meet their 2030 GHG reduction targets. JBS's estimated emissions are vast (see slide 7).
- The scientific community is clear that reducing methane emissions is our best strategy to stay within the Paris Agreement's 1.5ºC target, and we cannot achieve this without the reduction of meat and dairy consumption.
- A reported 57% of emissions from the food system arise from the production of animal-based food, including feed.
- Global leaders agreed the Emirates' Declaration on Agriculture and Food Systems at COP28 in the UAE at COP28, bringing food systems emissions – which are responsible for up to a third of all GHG emissions – into mandatory UNFCCC target setting via Nationally Determined Contributions, to support the delivery of the Paris Agreement target to limit temperature rises to 1.5ºC.
- In 2023, the US National Advertising Division (NAD) recommended JBS USA Holdings discontinue claims relating to its goal of achieving "net zero" emissions by 2040, due to a lack of a credible plan to meet this target. It also recommended JBS discontinue the claim "The SBTi recognized the net zero commitment of JBS". This was upheld on appeal.

Legal and regulatory risks: existing liabilities

- JBS's liabilities from criminal, civil and other legal proceedings rose to $3.6 billion, up from $1.7 billion as of July 2023 when the original prospectus was filed
- The company reportedly received $3.5 billion in fines for its involvement in multiple environmental, deforestation and corruption scandals between 2015-2022. JBS says it has invested "significantly" in its internal compliance program to prevent bribery and corruption (F-4, p.127).
- Examples of ongoing complaints include:

    1. In January 2023, a whistle blower complaint filed by Mighty Earth to the SEC calling for an investigation into $3.2 billion alleged "misleading and fraudulent" net zero related Sustainability-Linked Bonds issued by the company in 2021.
    2. On February 28, 2024, the Attorney General of the State of New York filed a civil complaint against two subsidiaries, JBS USA Food Company and JBS USA Food Company Holdings, in the Supreme Court of the State of New York alleging that the company's net zero by 2040 target is 'unsubstantiated and misleading to consumers.'

Reputational risks

- JBS carries significant reputational risk in connection with US and Brazilian civil and criminal actions and investigations involving the company's ultimate controlling shareholders (F-4, p.xii).
- JBS's supply chain is associated with decades of alleged human rights abuses and land grabs against Indigenous peoples and local communities (see link, link, link, link, link).
- According to a report from Amnesty International in 2020, "JBS contributes to human rights abuses against Indigenous peoples and residents of Reserves by participating in the economic incentives for cattle illegally grazed in protected areas". They allege the company has failed to carry out adequate due diligence as established under the UN Guiding Principles on Business and Human Rights.
- The company faces a high level of ongoing scrutiny by US lawmakers:
  - In June 2023, the US Senate Committee on Finance Chair Ron Wyden observed "JBS has made promises it would clean up his act when it came to deforestation. Most recently JBS said it would eliminate cattle involved in deforestation from supply chains by 2025. The reality is JBS is nowhere near meeting this commitment. Not even JBS's direct suppliers are totally clean." JBS said it aims for 100% participation in its Transparent Livestock Program – which aims to create traceable supplier networks - by 2025.
  - In April 2023, Senator Elizabeth Warren and US Representative Jamie Raskin called on the US Department of Agriculture to suspend and disbar government contracts with JBS USA, and its US subsidiaries, citing Brazilian parent J&F's "history of criminal misconduct", and referring to bribery, corrupt practices connected to J&F, price-fixing, and recent child labour offences at US facilities.
  - Led by Senator Cory Booker, a bi-partisan group of 15 US senators expressed 'deep concern' regarding JBS' IPO application and urging the SEC to further investigate a range of human, labour, price fixing and environmental considerations. Rep. Harriet Hageman has also called for the SEC to decline the company's application, given the concerns regarding 'JBS and its corrupt leadership'.

For further information, read the full briefing at https://www.globalwitness.org/en/press-releases/experts-issue-warning-to-investors/

When approached for comment about the claims in this briefing, JBS declined to comment.