



**THE HUMANE SOCIETY
OF THE UNITED STATES**



CENTER for BIOLOGICAL DIVERSITY
Because life is good.



**Farmed Animal
Advocacy Clinic**
VERMONT LAW & GRADUATE SCHOOL

June 17, 2024

Gurbir S. Grewal
Director, Division of Enforcement
Securities and Exchange Commission
Office of the Chairman
100 F Steet, NE
Washington, D.C. 20549

SEC Mail Processing

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VIA HAND-DELIVERY

Washington, DC

Re: Complaint requesting action to enjoin the dissemination of alleged false or misleading statements in apparent violation of antifraud provisions of the Federal Securities Laws.

Dear Director Grewal,

The Humane Society of the United States (“HSUS”) and the Center for Biological Diversity (“Center”) respectfully request that the Securities and Exchange Commission conduct a comprehensive investigation into JBS B.V., JBS S.A. (collectively, “JBS”), and their subsidiaries such as Pilgrim’s Pride (“Pilgrim’s”) (all collectively, “Group”) for apparent violations of federal securities laws. The investigative need is urgent in light of serious apparent legal deficiencies in the Group’s latest amended F-4 Registration Statement and Preliminary Prospectus (collectively “Offering Documents”).¹ In those Offering Documents, essentially intended to effectuate an initial public offering (“IPO”)² in the U.S., the Group

¹ Amendment No. 2 to Form F-4 Registration Statement Under the Securities Act of 1933, JBS B.V. (Mar. 27, 2024), available <https://www.sec.gov/Archives/edgar/data/1791942/000119312524078243/d654052df4a.htm> (“March 2024 F-4 Registration Statement”). Simultaneously, JBS S.A. also filed a Form F-4 regarding notes it wishes to convert. Form F-4 Registration Statement, JBS. S.A. (Mar. 27, 2024) available <https://www.sec.gov/ix?doc=/Archives/edgar/data/1450123/000121390024026248/ea0202118-01.htm>. The disclosures in this filing are virtually the same as those in the JBS B.V. Form F-4, as the business underlying both is the same. Thus, any misrepresentations and omissions are the same across both filings, and reference to the Offering Documents in this Complaint also refer to the JBS S.A. Form F-4.

² Through a series of proposed transactions, in essence, all of the currently existing JBS companies and their subsidiaries will operate under a Netherlands-based public corporate parent called JBS N.V. JBS N.V.’s common shares would be registered on the New York Stock Exchange in the IPO. See March 2024 F-4 Registration Statement, *supra* n. 1, at 2.

appears to deceptively misrepresent its animal welfare practices, deforestation conduct, and net zero emissions commitments, and it inadequately discloses financial risks related to these issues. The Offering Documents' apparent misrepresentations and omissions, along with statements on its websites, in sustainability reports, and in other forums, continue the Group's longstanding, ongoing deception of investors. Accordingly, if confirmed upon investigation, the Commission should refuse to declare the Offering Documents effective pursuant to 15 U.S.C. § 77h.

I. Executive Summary

The Group appears to materially deceive stakeholders about its animal welfare, sustainability, and climate change corporate commitments and standards, and fails to disclose significant financial risks regarding these issues. Animal agriculture is one of the biggest contributors to anthropogenic climate change, and industrial-scale animal agriculture is associated with horrific treatment of animals. Yet the Group, comprised of huge multinational meat producers supplying a substantial percentage of the globe's beef, pork, and chicken, misleads stakeholders about these realities.

First, companies in the Group purport to uniformly ensure the humane treatment and housing of the hundreds of millions of animals in their supply chains, even while compelling, recent evidence of many welfare violations appears to show the contrary. These claims likely deceive consumers and investors alike, as both groups are increasingly incentivized by animal welfare representations.

Moreover, the Group omits material information about the animal welfare-related financial risks to the companies and its investors as a result of its poor animal rearing, transportation, and slaughter practices. Consumers are increasingly motivated by animal welfare concerns, yet the Group does not discuss consumer-associated risks (*e.g.*, losing market share due to falling short of consumers' welfare expectations) in its current Offering Documents. A prior, September 2023 version of the Offering Documents did disclose, albeit inadequately, the risk of losing consumer goodwill over animal welfare issues, and Pilgrim's similarly discloses it in its latest annual report. The 2024 Offering Documents' failure to disclose that risk likely violates federal securities laws.

Second, the Group appears to mislead investors regarding greenhouse gas emissions claims. In 2021 members of the Group unambiguously publicly committed to achieving net zero greenhouse gas emissions by 2040. However, the Group has never demonstrated that this commitment is achievable at the current animal production level of these massive multinational meat companies. Moreover, the behemoth meat producer projects significant growth in its meat production – which would only result in *more* greenhouse gas emissions. In the Offering Documents, the Group now consistently attempts to reframe its promise as a mere aspiration, even

though it continues to maintain its net zero plans and advertising on its website. If the Group acknowledges that these entities' commitments are merely optimistic aspirations or that they are unachievable and withdraws them, this will likely cause immediate, dire financial and reputational damage. The goodwill and investment dollars the Group members appear to have unlawfully secured by way of their illusory net zero commitments would likely evaporate and likely trigger financially jeopardizing litigation and/or enforcement actions. The Group clearly understands that these commitments are important to its business, given how often it reiterates the claims publicly. Thus, its failure to disclose that the Group's companies have no plausible plans to achieve their commitments, or that they appear to be backtracking from these commitments, is a likely violation of securities laws.

Third, because the Group apparently does not have concrete plans in place to meet its climate goals, it is highly unlikely it will be able to comply with multiple pieces of legislation, posing further potential further risks. In a matter of months, members of the Group must comply with new European (December 2024) and Californian (January 2025) legislation related to deforestation and climate change. The Group discloses nothing about the implications for its business of the California law's requirements to publish on its websites how it estimates its net zero claims, and to report on its progress towards meeting its 2040 net zero commitment. The Group also does not disclose the serious financial risks inherent in failing to timely comply with this law. Companies in the Group either cannot timely comply, because compliance demands the sort of thorough disclosure of viable emissions reductions actions that the Group has so far been unable or unwilling to muster—or, compliance will require the companies to publicly admit that they have no scientific basis for their net zero plans, resulting in significant reputational harm. While the Offering Documents do discuss the newly enacted European Union deforestation legislation, which essentially imposes a “deforestation-free” mandate on certain products sold within or imported to the EU, they only frame the risks this law poses in hypothetical terms, and fail to state whether or not the Group is on track to comply, as it must, by the end of this year. By failing to specifically disclose these known regulatory compliance risks, the Group is likely violating securities laws.

As discussed in more detail below, the SEC should investigate the Group's statements, apparent half-truths and omissions. Given the seriousness of these apparent violations, the SEC should not declare the offering effective; an IPO proceeding on these Offering Documents threatens serious harm to investors.

II. Legal Standards

As described below, JBS's apparent material misrepresentations, omissions, and insufficient risk disclosures regarding animal welfare, deforestation, and climate

change appear to violate U.S. securities laws.³ Broadly speaking, the apparent violations discussed below fall into two categories: (1) misleading statements and omissions of material fact made in connection with the sales of securities (Rule 10b-5 violations) and (2) misleading statements and omissions of material fact made in the Offering Documents (violations of Sections 11 and 12(a)(2) of the Securities Act of 1933).

The first category of apparent violations discussed below involves the Group’s misleading statements and omissions of material facts in connection with its sale of securities which appear to violate Rule 10b-5.⁴ The SEC can prove Rule 10b-5 violations by showing that a person has: (1) made a material misrepresentation or a material omission⁵ as to which he had a duty to speak, or used a fraudulent device; (2) with scienter;⁶ (3) in connection with the offer or sale of securities.⁷ A statement

³ The SEC stayed its recently promulgated Enhancement and Standardization of Climate-Related Disclosures for Investors rule, “pending the completion of judicial review in consolidated” challenges to the rule “in the Eighth Circuit.” The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date, 89 Fed. Reg. 25804 (April 12, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-04-12/pdf/2024-07648.pdf>. However, legislation recently enacted in California and the European Union impose climate disclosure requirements very similar to those of the stayed SEC rule, as discussed *infra*. Accordingly, the Group’s likely failure to timely comply with the Californian and European disclosure laws in the coming months remains a risk that needs to be disclosed, as discussed further below, and its failure to adequately discuss these laws in its Offering Documents highlights its likely inability or unwillingness to comply and disclose risks pursuant to the currently stayed but imminent SEC rule.

⁴ 17 C.F.R. § 240.10b-5(b).

⁵ *Macquarie Infrastructure Corp. v. Moab Partners, L. P.*, 601 U.S. 257, 258 (2024) (“Rule 10b-5(b) . . . requires disclosure of information necessary to ensure that statements already made are clear and complete”; it “therefore covers half-truths, not pure omissions. Logically and by its plain text, the Rule requires identifying affirmative assertions (*i.e.*, ‘statements made’) before determining if other facts are needed to make those statements ‘not misleading.’”).

⁶ Scienter can be established where circumstantial evidence shows defendants “knew facts or had access to information suggesting that their public statements were not accurate” or “failed to check information they had a duty to monitor.” *SEC v. Fiore*, 416 F. Supp. 3d 306, 324 (S.D.N.Y. 2019) (citation and internal quotation marks omitted).

⁷ *SEC v. Frohling*, 851 F.3d 132, 136 (2d Cir. 2016); see also *SEC v. Wolfson*, 539 F.3d 1249, 1256 (10th Cir. 2008) (explaining that unlike private litigants in a § 10(b) enforcement action, “[t]he SEC is not required to prove reliance or injury in enforcement actions”) (alteration in original) (citation and internal quotation marks omitted)). In an enforcement action, the “in connection with” requirement is met where the SEC shows that “the misrepresentations in question were disseminated to the public in a medium upon which a reasonable investor would rely, and that they were material when disseminated.” *Semerenco v. Cendent Corp.*, 223 F.3d 165, 175-76 (3d Cir. 2000); Commission Guidance on the Use of Company Websites, Exchange Act Release No. 34-58288, 73 Fed. Reg. 45,862, 45,869 (Aug. 7, 2008), <https://www.govinfo.gov/content/pkg/FR-2008-08-07/pdf/E8-18148.pdf> (“The antifraud

or omission is material if it is one that “a reasonable investor would have considered significant in making investment decisions.”⁸ Additionally, even where there is no affirmative duty to address a topic, if a company chooses to address it, it cannot do so in half truths.⁹

The second category of apparent violations discussed below involves the Offering Documents’ misleading statements and omissions of material facts which appear to violate Sections 11 and 12(a)(2) of the Securities Act of 1933.¹⁰ These provisions create three primary grounds for liability regarding registration statements and prospectuses filed with the Commission: (1) the presence of a misrepresentation; (2) an omission in violation of an affirmative legal disclosure obligation;¹¹ and (3) an omission of information that is necessary to make existing disclosures not misleading.¹² “Neither scienter, reliance, nor loss causation is an element of Section 11 or Section 12(a)(2) claims.”¹³ Importantly, the duty to disclose requires adequate disclosure of known risks that have already materialized by the time of the IPO, and these may not be framed as hypotheticals.¹⁴

A violation of Section 11 and 12(a)(2) can be premised on a predicate duty to affirmatively disclose information, including duties imposed by sections of Regulation S-K. If such an omission also renders an existing disclosure materially misleading, then Rule 10b-5 liability is also triggered. Item 101 of Regulation S-K requires a disclosure of:

provisions of the federal securities laws apply to company statements made on the Internet in the same way they would apply to any other statement . . .”).

⁸ *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 161 (2d Cir. 2000).

⁹ *Macquarie Infrastructure*, 601 U.S. at 258; *FindWhat Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1305 (11th Cir. 2011) (“By voluntarily revealing one fact about its operations, a duty arises for the corporation to disclose such other facts, if any, as are necessary to ensure that what was revealed is not so incomplete as to mislead.”) (citations and internal quotation marks omitted)).

¹⁰ Sections 11 (15 U.S.C. § 77k) and 12(a)(2) (15 U.S.C. § 77l(a)(2)) of the Securities Act of 1933.

¹¹ *Macquarie Infrastructure*, 601 U.S. at 264 (in addition to prohibiting half-truths, “Congress imposed liability for pure omissions in § 11(a) of the Securities Act of 1933.”).

¹² *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 360 (2d Cir. 2010) (citing 15 U.S.C. §§ 77k(a), 77l(a)(2)).

¹³ *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 986 F. Supp. 2d 487, 506 (S.D.N.Y. 2013).

¹⁴ *Meyer v. Jinkosolar Holdings Co.*, 761 F.3d 245, 251 (2d Cir. 2014) (“A generic warning of a risk will not suffice when undisclosed facts on the ground would substantially affect a reasonable investor’s calculations of probability.”); *Panther Partners, Inc., v. Jianpu Tech. Inc.*, 2020 WL 5757628, *12 (S.D.N.Y., Sept. 27, 2020) (disclosures framed as “mere hypotheticals” imply “that the risk of regulation is a theoretical one, rather than – as Plaintiff alleges – a risk that has already materialized in the marketplace. ‘Cautionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired.’”) (quoting *Rombach v. Chang*, 355 F.3d 164, 173 (2d Cir. 2004)).

The material effects that compliance with government regulations, including environmental regulations, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries, including the estimated capital expenditures for environmental control facilities for the current fiscal year and any other material subsequent period.¹⁵

Similarly, Item 303 of Regulation S-K requires that a registration statement “[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material . . . impact on net sales or revenues or income from continuing operations.”¹⁶ Finally, Item 105 of Regulation S-K requires that companies disclose “material factors that make an investment in the registrant or offering speculative or risky,” with an explanation of “how each risk affects the registrant or the securities being offered.”¹⁷

In short, all of these regulations and requirements apply to the Offering Documents, and Rule 10b-5 further applies to any public statements made in connection with the Offering Documents that reasonable investors would rely on.¹⁸

III. The Group’s Animal Welfare Material Misrepresentations

Investors and consumers alike consider the welfare of animals in the care of companies like JBS and Pilgrim’s to be of critical importance. This reality is reflected in the policies of major financial and investment firms. For example, as a matter of

¹⁵ 17 C.F.R. § 229.101(c)(2)(i); *see also* Modernization of Regulations. S–K Items 101, 103, and 105, 85 Fed. Reg. 63726, 63737 (Oct. 8, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-19182.pdf>.

¹⁶ *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 120 (2d Cir. 2012) (Item 303 imposes a disclosure duty “where a trend, demand, commitment, event or uncertainty is both [1] presently known to management and [2] reasonably likely to have material effects on the registrant’s financial condition or results of operations.”) (*quoting* Management’s Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Release No. 6835, Exchange Act Release No. 26,831, Investment Company Act Release No. 16,961, 43 SEC Docket 1330 (May 18, 1989)).

¹⁷ 17 C.F.R. § 229.105(a), (b).

¹⁸ Although some of the Group entities are currently based outside of the U.S., their deceptive statements and omissions discussed herein are subject to U.S. federal securities laws. In addition to the Offering Documents themselves being subject to U.S. law, the anti-fraud laws apply extraterritorially to “conduct constituting significant steps in furtherance” of violating anti-fraud securities laws, as well as “conduct occurring outside the United States that has a foreseeable substantial effect within the United States.” 15 U.S.C. § 78aa(b)(1)-(2); *see also SEC v. Scoville*, 913 F.3d 1204, 1218 (10th Cir. 2019) (holding that “Congress has ‘affirmatively and unmistakably’ indicated that the antifraud provisions of the federal securities acts apply extraterritorially when the statutory conduct-and-effects test is met”).

policy, the investment management firm Northern Trust, which holds \$1.4 trillion in assets under management “generally votes for [shareholder] proposals requesting increased disclosure or reporting regarding animal treatment issues that may impact a company’s operations and products, especially in relation to food production.”¹⁹

Investors’ concern for animal welfare as a material business issue is not only rooted in moral concerns, but also in a recognition that horrid abuse and neglect, once exposed, can seriously impact a company’s reputation and financial performance.²⁰ Yet instead of providing adequate care and standards for animals, the Group’s companies (including JBS and Pilgrim’s), have for years spun fairy tales about requiring the humane treatment of the animals in their supply chains and leading the industry in promoting animal welfare.

For example, JBS claims that:

1. it is “committed to meeting or exceeding government and industry standards for humane animal handling;”²¹
2. it “expects” its animals “to be handled in a safe and humane manner throughout our supply chain;”²² and
3. it “is committed to providing the livestock and poultry under our care with comfortable and safe housing that meets their needs.”²³

Any reasonable investor (and consumer) would understand these statements, in combination and in context, to mean that JBS and Pilgrim’s provide humane care for their animals. Despite such claims, JBS also paradoxically claims that ensuring animals are free from things like disease, injury, pain and distress is “difficult to

¹⁹ *Proxy Voting Policies, Procedures, and Guidelines*, NORTHERN TRUST 20 (Dec. 12, 2022), https://cdn.northerntrust.com/pws/nt/documents/fact-sheets/mutual-funds/institutional/nt_proxypolicy.pdf?bc=25782798; About Us: Overview, Northern Trust, (last visited June 5, 2024).

²⁰ See, e.g., Glass Lewis, 2024 Benchmark Policy Guidelines — Shareholder Proposals & ESG-Related Issues, <https://www.glasslewis.com/wp-content/uploads/2023/11/2024-Shareholder-Proposals-ESG-Benchmark-Policy-Guidelines-Glass-Lewis.pdf> (“Glass Lewis believes that it is prudent for management to assess potential exposure to regulatory, legal and reputational risks associated with all business practices, including those related to animal welfare. A high-profile campaign launched against a company could result in shareholder action, a reduced customer base, protests and potentially costly litigation.”).

²¹ *Animal Care: Humane Handling*, JBS, <https://sustainability.jbsfoodsgroup.com/chapters/animal-care/humane-handling/> (last visited Jun. 12, 2024).

²² *Id.*

²³ *Housing*, JBS, <https://sustainability.jbsfoodsgroup.com/chapters/animal-care/housing/> (last visited Jun. 12, 2024).

achieve, if not impossible to measure.”²⁴ This is patently untrue, as veterinarians worldwide daily diagnose these health and welfare states in evaluating every sort of animal, including farm animals.²⁵ More importantly, JBS’s statement that measuring disease, injury, pain and distress in animals may be “impossible” means JBS cannot truthfully make claims 1, 2 and 3, as listed above.²⁶

To be truthful, the three claims listed above all require that their maker have an ability to detect injury, disease, pain, and distress; if, as JBS claims, these health and welfare conditions are all impossible to measure, at least some of the time, then it cannot universally guarantee the safe, comfortable, and humane treatment of every animal in its supply chain. Put another way, minimizing, or eliminating pain, injury, disease, and distress are primary objectives of industry and government animal handling standards,²⁷ and housing certainly cannot be “comfortable and safe”— nor meet an animal’s needs — if it causes the animal pain, injury, distress, or facilitates the spread of disease. Likewise, the partial inability to detect pain, injury, distress and disease spread belies JBS’s unqualified claims that it expects its animals are handled in a “safe and humane manner throughout [its] supply chain.”²⁸ In sum, a company that claims that in an undisclosed percentage of occurrences it is impossible to measure pain, suffering, distress and disease spread cannot guarantee that its animals never experience any or all of them. As such, these humane care claims appear to be false and/or misleading.

In reality, the situation for the tens of millions of animals in JBS’s supply chain differs in material ways from JBS’s animal welfare misrepresentations. For example, since at least 2022, pigs and cattle in JBS’s supply chain have been subject to severe animal cruelty, as borne out in violations of federal humane slaughter laws. Recent U.S. Department of Agriculture (“USDA”) humane handling violations at JBS slaughter facilities include:

²⁴ 2022 Sustainability Rep., JBS, 52 (2023), <https://jbsesg.com/wp-content/uploads/2023/08/2022-JBS-SUSTAINABILITY-REPORT.pdf> (last visited Jun. 12, 2024) referring to the “Five Freedoms.” (For more on the “Five Freedoms,” see generally Farm Animal Welfare Council, <https://webarchive.nationalarchives.gov.uk/ukgwa/20121010012427/http://www.fawc.org.uk/freedoms.htm>) (last visited Jun. 12, 2024).

²⁵ See e.g., Marian Stamp Dawkins, *The Science of Animal Suffering*, 114 *Ethology* 937, 943 (2008).

²⁶ See *supra* nn. 4-9; 21-23.

²⁷ See e.g., National Pork Board, *Swine Care Handbook*, 13 (“Sow housing and management systems should . . . “[r]educe[ing] exposure to hazards or conditions that result in injuries, pain, distress, fear or disease”) (emphasis added), available at <https://library.pork.org/?mediaId=B75B3A6A-75B3-441B-9A316C342353D356> (last visited Jun. 12, 2024).

²⁸ *Animal Care: Humane Handling*, JBS, *supra* n. 21 (emphasis added).

- Employees hoisting a conscious steer by its back leg having failed to stun the animal as required by federal law;²⁹
- Employees hitting cows and pigs with sharpened and jagged prods³⁰ and other objects;³¹
- Employees causing broken bones and other injuries;³²
- Excessive and unlawful use of paddles, pokers and electric prods, causing extensive bruising;³³
- Severe overcrowding, including immobilizing animals, and preventing them from even drinking;³⁴
- The use of poorly maintained or operated equipment causing serious injuries and distress;³⁵

²⁹ Attachment 1, excerpts extracted on March 28, 2024 from *Inspection Task Data, USDA Livestock Humane Handling Inspection Task (Current)*, USDA FOOD SAFETY & INSPECTION SERV., <https://www.fsis.usda.gov/science-data/data-sets-visualizations/inspection-task-data> (last visited May 31, 2024) (“Attachment 1”); Attachment 1 at 35 (Sept. 16, 2023) (conscious, blinking steer leg shackled, hoisted and moved towards slaughter.) This violation was serious enough to cause USDA to suspend inspection at this facility. Notice of Suspension, Swift Beef Company, Est., M969G (Sept. 17, 2023), https://www.fsis.usda.gov/sites/default/files/media_file/documents/M96G-NOS-091723.pdf.

³⁰ Attachment 1 at 29 (Feb. 24, 2023) (excessive use of prods, some with sharpened or jagged tips).

³¹ *Id.* at 33 (Jul. 24, 2023) (repeatedly striking pigs, including in the face with a plastic baseball bat); *id.* at 18 (Mar. 14, 2022) (pigs “bunched up” inside truck being struck with a shaker can and plastic board causing vocalizations “louder than vocalizations heard during normal animal movement and handling. The hogs continued to vocalize loudly, as they frantically turned into one another.”).

³² *Id.* at 94 (Sept. 24, 2023) (pig sitting “with a bloody mouth, with a distressed appearance. The hog had a cut below the jaw with a broken mandible (lower jawbone)); *id.* at 93 (May 15, 2023) (several pigs with multiple circular/oval tool markings and bruises form “misuse [that] occurred at the establishment”).

³³ *Id.* at 11 (Oct. 14, 2021) (cow electrically prodded and possibly on sensitive perineum); *id.* at 37 (Apr. 16, 2021) (bruising from prodding and paddling); *id.* at 54 (Jan. 9, 2022) (several animals each with multiple bruises and other injuries from paddling, a poker, and an unidentified instrument).

³⁴ *Id.* at 7 (July 7, 2021) (a pen “containing 14 Holstein cows 13 of which were standing side by side with no room to move and one cow jammed in the corner in a lateral recumbent position with its' head protruding completely beneath the gate into the alley and unable to move. These cattle were received on 7/6/21 and held overnight and due to the overcrowded pen condition the cattle were unable to lie down or have access to water”); *id.* at 37 (May 11, 2021) (overcrowded cattle, and access to water may have been hindered or denied); *id.* at 79 (Dec. 8, 2022) (overcrowded pen); *id.* at 93 (June 20, 2023) (overcrowded pen and employee “moving in pen, toward the pigs, rather than walking around, causing pigs to pile and vocalize against the back of the pen. Hogs were stressed from overcrowding and heat”).

³⁵ *Id.* at 7 (Jun. 24, 2021) (cow with head trapped in equipment, “was clearly distressed in this position. [He] was trying to pull back with [his] feet. In addition, [his] tongue was protruding from [his] mouth. Lastly, twice while establishment personnel were trying to free

- animals subjected to excessive force, even when moving adequately,³⁶ and
- animals left to suffer in distressing conditions, such as a collapsed, immobilized cow trapped and trampled in a truck.³⁷

USDA records documenting these and other similar abuses highlight JBS's systemically inadequate animal welfare practices.

Likewise, Pilgrim's has a long history of well-documented cruelty to chickens. Like JBS, Pilgrim's touts its commitment to "safe and humane" animal handling practices, and claims to "meet[] or exceed[] government and industry standards for humane animal handling."³⁸ Pilgrim's also claims that the presence of USDA inspectors at its slaughter facilities, along with its own quality assurance team, "assures full compliance with all applicable USDA chicken processing regulations."³⁹ However, undercover investigations at factory farms supplying Pilgrim's as well as USDA records have repeatedly exposed the company's animal welfare violations. In 2019, HSUS brought these issues to the SEC's attention.⁴⁰ With this track record, it is sadly unsurprising that a recent 2023 investigation by Mercy for Animals documented more wanton cruelty and neglect at factory farms supplying Pilgrim's. The undercover investigation video-documented filthy living conditions and workers

the beef animal's head, I twice heard the animal beller [sic]"); *id.* at 14 (Dec. 2, 2021) (pig with trapped leg, trampled by other pigs); *id.* at 18 (Mar. 15, 2022) (failure to properly use unloading ramp caused cow to fall and "[w]hen the animal was finally capable of getting back on its feet and out of the trailer, I found that the animal had fresh blood from a laceration on the inside of its right hind leg and approximately 5 inches of skin hanging. In addition, she had fresh scrapes on her udder."); *see also*, Notice of Suspension, JBS Plainwell, Inc., Est. M562M, at 2 (Mar. 29, 2022),

https://www.fsis.usda.gov/sites/default/files/media_file/2022-04/M562M-NOS-03292022.pdf (steer caught in chute and "contorted and entrapped . . . with the head and neck bent and "pinned beneath the left shoulder by the weight of the animal. The animal was observed to be alive and breathing rapidly," but died in that position within 20 minutes).

³⁶ Attachment 1 at 29 (Feb. 24, 2023) ("employees using air injection prods on cattle . . . repeatedly . . . on seven consecutive animals with no assessment whether the animals would move on their own (in the absence of prodding) towards the knock box.").

³⁷ *Id.* at 25 (Aug. 16, 2022) (25-30 pigs "piling and toppling over one another with continuous loud vocalizations." Some fell and one was on the ground "panting heavily with purple blotchy skin. Numerous hogs stepped on the down hog from both directions" and the animal was euthanized.); *id.* at 75 (Oct. 13, 2022) (two collapsed cows on a truck, one blocking the exit for 20 or so cows, and "I could observe the cattle stepping over and on the cow's neck and head.").

³⁸ *Animal Handling & Welfare Practices*, Pilgrim's Pride, <https://sustainability.pilgrims.com/product-integrity/animal-handling/> (last visited Apr. 12, 2024).

³⁹ *Id.*

⁴⁰ *See* Attachment 2, HSUS SEC Complaint re: Pilgrim's Pride Corp., at 54-67 (May 9, 2019) (describing several undercover investigations, whistleblower accounts, and federal inspection records showing inhumane treatment of animals).

stomping on birds, kicking them against walls and violently tossing them by their wings, legs, and necks into grossly overcrowded cages on trucks that will take them to slaughter.⁴¹

Once unloaded at slaughter, USDA inspection records reveal the grim reality of these tortured birds' final hours. As with JBS facilities, these records evidence recurrent, severe cruelty in violation of USDA regulations at Pilgrim's facilities.⁴² Incidents include birds being caught and crushed in cage mechanisms,⁴³ multiple instances of live birds entering scald tanks (intended only for deceased birds to remove feathers), and birds improperly cut while conscious, leading to severe injury or death without being stunned.⁴⁴ There were alarming numbers of birds found dead on arrival ("DOA") at processing plants, often due to extreme temperatures during transport or holding.⁴⁵ Additionally, USDA violation records show live birds dumped in DOA bins and at times suffocating under piles of DOA carcasses.⁴⁶ These reports span from 2016

⁴¹ *Breaking: Birds at Major Chicken Supplier Viciously Kicked and Thrown*, Mercy for Animals, <https://nokyaggag.com/> (last visited Apr. 12, 2024).

⁴² *The Welfare of Birds at Slaughter in the U.S.*, ANIMAL WELFARE INST. (2023) (summarizing slaughter facility cruelty at Pilgrim's Pride facilities), <https://awionline.org/store/catalog/animal-welfare-publications/farmed-animals/welfare-birds-slaughter-united-states> (last visited June 14, 2024).

⁴³ Attachment 1 at 151 (July 29, 2021) ("observed two live birds mutilated by the machinery of the automatic cage dumper," both died shortly thereafter.); *id.* at 154 (Apr. 1, 2022) (birds falling out of cages while moved by forklift); *id.* at 154 (June 14, 2022) ("Full crate of about 200 caged birds dropped 15 feet off of forklift "spilling live birds on the ground under and around the cage . . . I counted approximately 28 birds that had died/were crushed underneath the cage.").

⁴⁴ *Id.* at 150 (May 23, 2021) ("I observed a live bird with blinking eyes on the outside line progressing through the blood trough of the kill line to enter the scald. There was no evidence of a cut from the kill blade, nor the backup kill step on the bird. . . . Without USDA intervention, the live bird would have entered the scald still breathing." Later that day two more birds were removed before the scald tank.); *id.* at 152 (Nov. 8, 2021) ("the following was observed: a cherry red carcass, with its head attached and engorged with blood, was observed in a yellow condemn barrel which was partially (2/3) full behind the line 2 auto-rehang belt. I also observed the team member remove a cherry red carcass with its head attached and engorged with blood from the line at 1230 hours."). A reddened carcass engorged with blood is evidence that the bird entered the scald tank conscious. *See id.* at 150 (May 23, 2021) (if "birds are not physiologically dead when they enter the scald tank," "[w]hen submerged in the scald water, these birds drown and their physiological reaction to the heat is to dilate the vasculature in the skin and organs. This causes the skin to become cherry red to purple of the whole carcass or the lower regions of the carcass. On some occasions, only the neck will appear cherry red or purple.").

⁴⁵ *Id.* at 153 (Jan. 3, 2022) ("The cold weather (39 degrees at time of observation) had led to an increase in DOAs (dead on arrival)." Two live birds were put in a DOA dumpster. Both were "hypothermic" and both died shortly thereafter.)

⁴⁶ *Id.* at 148 (Oct. 23, 2023) ("Upon initial observation of the dumpster, I saw that the dumpster was overflowing with carcasses spilling onto the floor. As I looked inside the bin, I

to 2023, indicating the company’s ongoing and systemic problems with animal handling and welfare.

These are myriad violations of the minimal voluntary and legal standards⁴⁷ that many other companies do meet (and some exceed).⁴⁸ This means that JBS not only causes its animals to suffer, but it does so more so than other companies, making its misrepresentations about animal welfare even more egregious. The gravity of this conclusion is underscored by the most recent Business Benchmark on Farm Animal Welfare (“BBFAW”), in which JBS received the lowest rating, an F, for its animal welfare program.⁴⁹

JBS’s and Pilgrim’s animal welfare claims on their respective websites and sustainability reports are thus apparently unlawfully and materially deceptive in violation of Rule 10b-5, exposing investors to financially material risks. The Group promotes animal welfare on its websites and in its sustainability reports, where interested investors are likely to see them. But the Group conspicuously fails to disclose—in its Offering Documents or elsewhere—the litany of violations that betray its lofty promises. These omissions render the Group’s animal welfare claims discussed above unlawful half-truths that appear to violate Rule 10b-5.⁵⁰ The deception here is material, as the companies’ failure to operate according to their own stated animal welfare standards is a failure that “a reasonable investor would . . . consider[] significant in making investment decisions,” given the risk of serious

saw movement and saw that two birds were still alive mixed in with the DOAs” and more found on a table “overflowing with carcasses. Once again, I observed two more birds that were still alive as evident of breathing, open eyes and wing movement when touched.”).

⁴⁷ No federal law in the U.S. sets minimum standards for how farm animals are raised and federal laws such as the Federal Meat Inspection Act (FMIA), Humane Methods of Slaughter Act (HMSA), and the Poultry Products Inspection Act (PPIA) offer only limited, and often underenforced, protections for farm animals during the slaughter process. *See Humane Methods of Slaughter Act: Actions Are Needed to Strengthen Enforcement*, Gov. Accountability Off. (Feb. 2010), <https://www.gao.gov/assets/gao-10-203.pdf>.

⁴⁸ *See e.g.*, Br. of Amicus Curiae Global Animal, Partnership and EarthClaims in Support of Respondents, *Nat’l Pork Prods. Council, et al., v. Ross, et al.*, No. 21-468, 2022 WL 3567491, at *6-7 (filed Aug. 15, 2022), available at https://www.supremecourt.gov/DocketPDF/21/21-468/233507/20220815145950891_21-468%20Global%20Partnership%20and%20EarthClaims%20as%20Amici%20Curiae.pdf; Br. of Amicus Curiae Perdue Premium Meat Co., Inc., d/b/a Niman Ranch in Support of Respondents, *Nat’l Pork Prods. Council, et al., v. Ross, et al.*, No. 21-468, 2022 WL 3567477, at *1 (filed Aug. 15, 2022), available at http://www.supremecourt.gov/DocketPDF/21/21-468/233498/20220815141539359_21-468_Amicus%20Brief.pdf (describing Niman Ranch as “an industry leader in sustainable agriculture and humane animal care.”).

⁴⁹ Nicky Amos et al., BBFAW, *The Business Benchmark on Farm Animal Welfare: 2023 Report* 17 (Apr. 25, 2024), <https://www.bbfa.com/media/2176/bbfa-2023-report-final.pdf>.

⁵⁰ *Macquarie Infrastructure*, 601 U.S. at 264; *Meyer*, 761 F.3d at 249–50.

reputational and financial fallout from such failings, as discussed above.⁵¹ Rule 10b-5's scienter element is likewise satisfied as both companies "knew facts or had access to information suggesting that their public statements" touting their high welfare standards "were not accurate" or at least "failed to check information they had a duty to monitor."⁵²

Moreover, the Group is undoubtedly well aware that its poor welfare practices significantly affect its business and operations. Not only is it subject to potential federal government enforcement actions as a result of its regulatory violations, but it also stands to lose valuable consumer goodwill. Yet, in its most recent Offering Documents, when discussing how changes in consumer trends and/or consumers' negative perceptions regarding the quality and safety of the Group's products could adversely affect its business, the Group *removed* its prior, September 1, 2023 amended F-4 registration's reference to risks stemming from "consumer trends, demands and preferences" involving "the perceived consumer concerns related to . . . animal welfare."⁵³ With that clause removed, animal welfare only appears in JBS's Offering Documents in regard to its purported compliance with animal welfare standards in Australia and Europe.⁵⁴ The Offering Documents no longer mention, and thus do not adequately disclose, risks associated with consumer trends involving animal welfare concerns. This material omission is concerning given the company's track record of routinely failing to meet its own animal welfare standards (as well as legally binding standards), as evidenced by the discussion above. In short, the Group is not adequately disclosing the potential for serious financial, reputational, and consumer demand risks related to the Group's poor animal welfare practices.

Despite the Group's removal of reference to this risk factor in its Offering Documents, Pilgrim's recently admitted in its required annual reporting that falling short of consumers' animal welfare expectations can threaten performance:

Trends within the food industry change often, and failure to identify and react to changes in these trends could lead to, among other things, reduced demand and price reductions for our products, and could have an adverse effect on our financial results. For example, consumer concerns related to . . . animal welfare of animal-based protein sources have driven consumer interest in plant-based protein sources. Because we primarily produce chicken and pork products, we may be limited in

⁵¹ *Ganino*, 228 F.3d at 161.

⁵² *Fiore*, 416 F. Supp. 3d at 324 (citation and internal quotation marks omitted).

⁵³ Amendment No. 1 to Form F-4 Registration Statement Under the Securities Act of 1933 at 43, JBS B.V. (Sept. 1, 2023), available <https://www.sec.gov/Archives/edgar/data/1791942/000119312523227736/d419054df4a.htm>.

⁵⁴ March 2024 F-4 Registration Statement at 120 (animal welfare regulation in Australia); *id.* at 108 (discussing chicken transport in Europe); *see also id.* at 169 (JBS's research on various topics including animal welfare).

our ability to respond to changes in consumer preferences towards other animal-based proteins or away from animal-based proteins entirely.⁵⁵

The Group has not, and cannot, reasonably explain why this consumer trend risk disclosed (still inadequately, and only as a hypothetical) by its subsidiary deserves no mention whatsoever in its latest Offering Documents. As recently as September 2023, this was a trend and risk factor the Group did feel obligated to disclose. It is hard to fathom how the animal welfare-related consumer trend and reputational risks connected to the raising and killing of hundreds of millions of animals in dozens of countries, while violating even minimal animal welfare standards, could have entirely disappeared in just the past few months. The failure to disclose this presently known trend and risk factor that Pilgrim's admitted could have an adverse effect on its financial results appears to violate Items 105 and 303 of Regulation S-K and Sections 11 and 12(a)(2).⁵⁶

IV. The Group's Climate and Deforestation Material Misrepresentations

A. The Group misleads investors with its net zero climate claims

The Group also appears to violate federal securities laws by persistently making what appear to be false and deceptive claims about the companies' plans and abilities to become "net zero" – that is, to emit, on balance, no greenhouse gases ("GHGs"). The contribution of GHG emissions to climate change significantly harms animals around the world: from displaced wildlife, to companion animals suffering in climate disasters, to ocean creatures suffering from acidification and higher ocean temperatures. "Indeed, the only source of animal suffering and death that is even remotely in the same class as climate change is factory farming, which ironically is both a cause of direct suffering for billions of confined animals, and also a significant cause of climate change emissions that are likely to kill billions of wild animals—a double header of misery."⁵⁷ The issue of reducing animal agriculture's climate change contributions is, thus, of imminent importance to many stakeholders, including governments and investors.⁵⁸

In recognition of the major importance of climate change as an investment issue, the Group has widely publicized to investors, and the broader public, its net zero promise: on its website, in print ads, in sustainability reports, as well as

⁵⁵ Pilgrim's Pride, Form 10-K at 11 (Feb. 27, 2024), <https://ir.pilgrims.com/node/17051/html>.

⁵⁶ See 17 C.F.R. § 229.303(a)(3)(ii); *Ikanos Commc'ns, Inc.*, 681 F.3d at 120.

⁵⁷ Jonathan Lovvorn, *Climate Change Beyond Environmentalism Part I: Intersectional Threats and the Case for Collective Action*, 29 *Georgetown Int'l Env. L. Rev.* 1, 59 (2017).

⁵⁸ See, e.g., *infra* nn. 59, 62.

references to its sustainability targets in its Offering Documents.⁵⁹ But the Group has no apparent way to meet this goal, and has not taken substantial steps in that direction. For example, as the State of New York explained in a recently filed consumer protection complaint alleging JBS unlawfully misled New Yorkers with its net zero commitment:

On March 21, 2021, the JBS Group made a sweeping commitment to consumers and the public that the global company would be “Net Zero by 2040.” It announced: “JBS, one of the world’s leading food companies, today announced a commitment to achieve net zero greenhouse gas (GHG) emissions by 2040. The commitment spans the company’s global operations, ... as well as its diverse value chain of agricultural producer partners, suppliers and customers in their efforts to reduce emissions across the value chain.”⁶⁰

But this and similar claims, made by the self-proclaimed “global leader” in the beef, poultry, and leather industries,⁶¹ are patently unsupportable.

The Group’s net zero claims appear to be unlawfully deceptive in at least two respects. First, in its Offering Documents, the Group consistently attempts to reframe its 2021 “net zero by 2040” commitment as merely an aspirational goal, something the Group is only “striving for.”⁶² Yet the Group’s repeated contemporaneous claims in advertisements, press releases, on its websites, and in its sustainability reports clearly show that the Group publicly *committed* to achieving net zero by 2040, not that it would merely *strive* to achieve it.⁶³ This attempted reframing of its corporate commitment as a mere aspiration appears to violate Rule 10b-5 and Sections 11 and 12(a) as it materially misrepresents the Group’s self-imposed 2040 commitment, as it was represented to investors and consumers, as now merely something it is striving for.

⁵⁹ See e.g. *People of the State of New York v. JBS USA Food Co., et al.*, No. 0450682/2024, Compl. at ¶¶ 100-114 (filed N.Y. Sup. Ct. Feb. 28, 2024) (Attachment 3); see *infra* n. 62.

⁶⁰ *Id.*; see also JBS USA, LLC, *JBS Makes Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040* (Mar. 23, 2021), <https://jbsfoodsgroup.com/articles/jbs-makes-global-commitment-to-achieve-net-zero-greenhouse-gas-emissions-by-2040>.

⁶¹ See e.g., JBS, Investor Relations, *Footprint and Operations*, <https://ri.jbs.com.br/en/jbs/footprint-and-operations/> (last visited June 14, 2024) (also claiming to be “the second largest pork producer in the USA”).

⁶² See March 2024 F-4 Registration Statement at 43 (describing its “climate reduction goals by 2040” as “aspiration[]” and a “goal[]”); *id.* at 6, 132, F-113 (mischaracterizing New York’s lawsuit as alleging JBS unlawfully misled consumers regarding its “striving to achieve Net Zero by 2040”); compare Compl., *supra* n. 59, at ¶ 100.

⁶³ See *supra* nn. 59-60.

While the Offering Documents acknowledge that the Group’s 2040 commitment created risks and that any failures related to it creates risks for shareholders,⁶⁴ they never disclose that (a) the Group is attempting to back down from its 2021 net zero by 2040 commitment nor (b) the Group faces risks stemming from its attempt to back down from that commitment. It appears that the Group knowingly touted its 2040 commitment to attract investors with climate concerns, and the Group knows—or is negligent in not knowing—that backing away from that commitment threatens significant financial damage in the form of reputational harm, litigation (similar to that filed by the New York Attorney General), enforcement actions, and divestment when that reversal comes to light. The Group’s knowingly made, material half-truths regarding the 2040 commitment in its Offering Document thus appear to violate Rule 10b-5 and Sections 11 and 12(a)(2).⁶⁵

Second, even if the company had merely stated an aspiration to be net zero by 2040 (which it did not), it has not and cannot point to plans now in place to make that aspiration reasonable—even without accounting for its plans to majorly expand production. In 2023, the National Advertising Division (“NAD”) of the Better Business Bureau (“BBB”), after a thorough review, found JBS’s claims about its net zero sustainability commitment misleading.⁶⁶ The NAD found JBS’s net zero claims and sustainability goals to be unsupported by any detailed plan for achieving operational net zero emissions by 2040, as the company had pledged to do.⁶⁷ Following this finding, JBS made minor adjustments to its claims, yet the NAD noted

⁶⁴ See March 2024 F-4 Registration Statement at 43, 126.

⁶⁵ *FindWhat*, 658 F.3d at 1305 (half-truths); *Fiore*, 416 F. Supp. 3d at 324 (10b-5 scienter); *In re Morgan Stanley*, 592 F.3d at 360 (misrepresentation is a basis for Section 11 and 12(a)(2) liability).

⁶⁶ NAD Final Decision, Case #7135, *Inst. for Agric. & Trade Pol’y (challenger) v. JBS USA Holdings, Inc. (advertiser)* (Feb. 1, 2023) (Attachment 4); Appeal of NAD’s Final Decision #7135 Regarding Claims for JBS USA Holdings Inc., Net Zero 2040, *Inst. for Agric. & Trade Pol’y (challenger) v. JBS USA Holdings, Inc. (advertiser)*, NARB Panel 313 (May 26, 2023) (Attachment 5); see also *JBS Appeals National Advertising Division Recommendation to Discontinue “Net Zero” Emissions by 2040 Claims*, BETTER BUSINESS BUREAU NAT’L ADVERT. DIV. (Feb. 15, 2023), <https://bbbprograms.org/media-center/dd/jbs-net-zero-emissions>.

⁶⁷ NAD Final Decision, *supra* n. 66, at 10-11. Even if the net zero obligation is construed as merely aspirational, it is nevertheless apparently actionable because it is factual, as evidenced by the Group’s efforts to prove facts underpinning that commitment before the NAD, and because it relates to a core aspect of the Group’s business (the carbon footprint of one of the largest companies in an industry with an outsized carbon footprint). See *In re Moody’s Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 509, *op. corrected on den. of recons.*, 612 F. Supp. 2d 397 (S.D.N.Y. 2009) (Defendant’s claims regarding its independence were actionably deceptive and not vague or puffery where capable of objective verification and where defendant identified verifiable actions taken to ensure independence.); *In re Equifax Inc. Sec. Litig.*, 357 F. Supp. 3d 1189, 1224 (N.D. Ga. 2019) (given company’s repeated references to cybersecurity protections and the importance of these protections to the credit bureau defendant’s business, supposedly “aspirational” statements were actionably deceptive).

in a 2023 compliance report that these modified claims—which are still online—remained substantially similar to the earlier statements that were recommended for discontinuation.⁶⁸ As noted above, these claims are now the subject of a lawsuit filed by New York’s Attorney General.⁶⁹

The Group’s net zero claims need to be understood in tandem with its bullish statements about the Group’s ability to rapidly grow and increase its production in coming years.⁷⁰ For example, the Offering Documents relay an “estimated growth rate (average for the next 5 years)” of 7.2% for its Brazilian beef production, up nearly one percentage point from its 2022 estimated average 5-year growth rate of 6.6%.⁷¹ The Offering Documents include similar positive estimated growth rates for pork, chicken and other products, as well.⁷² JBS has not explained how it can achieve net zero by 2040 at its current size and output, making its claims to do so while also massively expanding its beef, pork, and chicken output in the near future even more unfounded.⁷³

It appears that the Group continues to speak out of both sides of its mouth: On the one hand, the Group makes lofty promises about reducing its greenhouse gas emissions in public-facing sustainability reports and in other forums; on the other hand, the Group provides weak disclaimers in its Offering Documents in an effort to retroactively convert its net zero commitment to mere “aspiration.”⁷⁴ The Offering Documents’ apparent half-truths and misrepresentations regarding its net zero commitment thereby deceive investors in apparent violation of Rule 10b-5 and Sections 11 and 12(a)(2).⁷⁵

⁶⁸ Compliance Proceeding from NAD Case Report #7135, *Inst. For Agric. & Trade Pol’y v. JBS USA Holdings, Inc.*, Case No. 7135; NARB #313C at 3-4 (Nov. 3, 2023) (Attachment 6) (recommending discontinuation of the phrase “Net Zero by 2040” in its entirety, as well as phrase “Our ambition is to achieve net-zero greenhouse gas emissions by 2040 . . .”); compare, e.g., *Our Approach to Net Zero*, JBS, <https://jbsfoodsgroup.com/our-purpose/net-zero> (last visited June 14, 2024) (maintaining claims recommended for discontinuation).

⁶⁹ *Attorney General James Sues World’s Largest Beef Producer for Misrepresenting Environmental Impact of Their Products* (Feb. 28, 2024), <https://ag.ny.gov/press-release/2024/attorney-general-james-sues-worlds-largest-beef-producer-misrepresenting>; Compl., *supra* n. 59 (Attachment 3).

⁷⁰ Compl., *supra* n. 59 at ¶¶ 143-57 (Attachment 3).

⁷¹ March 2024 F-4 Registration Statement, *supra* n. 1, at F-52.

⁷² *Id.* at F-52–F-56.

⁷³ *Id.*; *Jianpu Tech. Inc.*, 2020 WL 5757628, at *13 (S.D.N.Y. Sept. 27, 2020) (“bullish” statements created obligation to disclose facts that contradict or undercut such statements).

⁷⁴ See March 2024 F-4 Registration Statement, *supra* n. 1, at 43 (describing its net zero commitment as “aspiration[]” and a “goal[]” and laying the groundwork to blame third parties (“experts, shareholders, customers, governments, and partners throughout our supply chain.”) for the Group’s failure to timely achieve its net zero commitment.)

⁷⁵ *FindWhat Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1305 (11th Cir. 2011) (half-truths); *SEC v. Fiore*, 416 F. Supp. 3d 306, 324 (S.D.N.Y. 2019) (10b-5 scienter); *In re Morgan*

B. The Group is unlikely to timely comply with California’s Voluntary Carbon Market Disclosures Act and it fails to disclose this risk in its Offering Documents.

Given that the Group apparently does not have concrete plans in place to meet its goals, it is highly unlikely that it will be able to comply with other climate-related legislation, apparently posing material, undisclosed compliance risks. Pursuant to California’s Voluntary Carbon Market Disclosures Act (“VCMDA”),⁷⁶ by January 2025 at the latest,⁷⁷ the Group must annually report on its websites how it does the math on its net zero claims—if it has any to show.⁷⁸ That law requires that companies—including JBS—operating in California and making net zero, carbon-neutral, or significant emissions reductions claims must document the accuracy and means of achieving these goals on their websites.⁷⁹ These website disclosures must include all information regarding how a “carbon neutral,” “net zero emission,” or other claim was determined to be accurate or accomplished, how interim progress toward that goal is being measured, and whether company data and claims listed have been verified by an independent third party.⁸⁰ If a company has no such information, it must disclose that to the public.⁸¹ Failure to comply can lead to significant penalties, as well as reputational and financial damage.⁸² Thus, if JBS cannot back up its net

Stanley Info. Fund Sec. Litig., 592 F.3d 347, 360 (2d Cir. 2010) (misrepresentation is a basis for Section 11 and 12(a)(2) liability).

⁷⁶ Cal. Health & Safety Code § 44475.2.

⁷⁷ See Letter of Cal. State Assembly Member Jesse Gabriel to Sue Parker, Chief Clerk of the Assembly (Nov. 30, 2023) (VCMDA sponsor describing “inten[ded]” compliance deadline for first disclosures as January 1, 2025), <https://www.kirkland.com/-/media/publications/alert/2023/10/letter-of-legislative-intent.pdf?rev=22f02e83eb5a4698be50c57a1cb7ef85&hash=13951BA3A2F1A87B654DC0B60F2E7BC6>. Notably, by early 2024 many companies had already updated their websites with the detailed disclosures required by the VCMDA. See, e.g. Bank of America, California Voluntary Carbon Market Disclosure Act (VCMDA) Disclosure, <https://about.bankofamerica.com/en/making-an-impact/vcmda>.

⁷⁸ The VCMDA applies to entities that “operate” or “make claims within” California. The Group’s companies do so, as the companies’ websites are directed at California residents, each sells significant amounts of their respective products in California, and JBS Foods also maintains two business addresses in the state. Cal. Health & Safety Code § 44475.2; JBS, Our Locations, United States, <https://jbsfoodsgroup.com/locations/united-states>.

⁷⁹ Cal. Health & Safety Code § 44475.2.

⁸⁰ *Id.*

⁸¹ Cal. Health & Safety Code § 44475.2(a) (requiring disclosure of “[a]ll information documenting how, *if at all*,” net zero claims are supported (emphasis added)).

⁸² Cal. Health & Safety Code § 44475.3 (penalties range between \$2,500 up to a total of \$500,000 “for each day that information is not available or is inaccurate on the person’s internet website.”).

zero claim with evidence as required by the VCMDA, it will have to let the public know its “net zero” promises are bogus; or it may decide to withdraw them altogether. Either way, this is likely to lead to further reputational and financial damage.

Because the Group continues to widely publicize its net zero claims, as discussed above, and purports to be making progress towards its goals,⁸³ it will also need to annually show the math justifying those claims of progress—or publicly admit it has no such information—and must disclose on its websites if these analyses have been verified by any independent third party.⁸⁴ The VCMDA requires precisely the sort of transparent due diligence disclosure regarding its net zero claims that JBS appears to have steadfastly refused to provide, even when facing a challenge to such claims before the NAD (which it lost). In its most recent Offering Documents, JBS never mentions the VCMDA and fails to disclose any risks related to its imminent compliance deadline, next January 1.⁸⁵

The Group’s failure to specifically disclose the imminent risks and impacts associated with compliance with the VCMDA, and its potential failure to comply, each appear to violate federal securities laws. If the Group is unable or unwilling to timely comply with the VCMDA, or is planning on admitting that it cannot back up its net zero claims, that fact is material: reasonable investors would consider it significant to an investment decision, given the significant negative financial, reputational and operational consequences of noncompliance. The Group’s failure to disclose the “material effects” that compliance with the VCMDA “may have” on its “capital expenditures, earnings and competitive position” appears to violate Item 101 of Regulation S-K and thus apparently violates Sections 11 and 12(a)(2). Likewise, this omission appears to violate Item 303 of Regulation S-K (and Sections 11 and 12 in turn) as it is a failure to describe “known trends or uncertainties that have had or

⁸³ See, e.g., *Our Goals and Progress*, JBS, <https://jbsesg.com/jbs/our-goals-and-progress/> (last visited June 14, 2024) (identifying goal to “Achieve Net-Zero greenhouse gas (GHG) emissions by 2040” and listing various items under “Our Progress”); *Our Approach to Net Zero*, JBS, <https://jbsfoodsgroup.com/our-purpose/net-zero> (last visited June 14, 2024) (describing steps taken “to reach net zero”).

⁸⁴ Cal. Health & Safety Code § 44475.2; see JBS, *Our Goals and Progress*, available at <https://jbsesg.com/jbs/our-goals-and-progress/>.

⁸⁵ The Group only offers a vague disclosure about what “may” or “could” happen if it fails to meet its sustainability goals—but it says nothing about reporting requirements. March 2024 F-4 Registration Statement at 43. It also provides a vague, non-specific disclosure about potential climate-related regulation and potential “difficult and costly” compliance. *Id.* at 54-55. Given the imminence of the VCMDA’s effective date, and JBS’s likely noncompliance or being forced to disclose it has no plans in place, these disclosures are clearly inadequate and insufficiently specific.

that the registrant reasonably expects will have a material . . . impact on net sales or revenues or income from continuing operations.”⁸⁶

C. The Group insufficiently discloses significant risks posed by the European Union Deforestation Regulation in its Offering Documents.

Deforestation to clear land for farming significantly harms wildlife directly, and—especially when it comes to rainforest deforestation—is also a major contributor to climate change which in turn harms animals worldwide.⁸⁷ In recognition of the massive damage caused by deforestation, the European Union passed the Deforestation Regulation (“EUDR”). The EUDR, effective from June 29, 2023, mandates that companies operating in the EU, including the Group, comply with its requirements by December 30, 2024.⁸⁸ It prohibits importing or selling certain products, like cattle, beef, and soya,⁸⁹ unless they meet strict criteria. Principally, such products must be “deforestation-free” and adhere to the production country’s laws, with compliance supported by a due diligence statement.⁹⁰ Because non-compliant products are entirely banned from the EU market, noncompliance will constitute a significant business risk for any company that sells cattle and beef products, such as the Group. Non-compliant sales of banned product also carry severe penalties, including confiscation of violative products and revenues from the sales of such products and fines of at least 4% of the company’s annual European Union (“EU”) turnover in the preceding year.⁹¹

Despite the significance of EU export revenue—constituting roughly 9% of the Group’s global net revenue, ranking third behind the U.S. (49%) and Asia (14%)—the Group has failed to disclose the substantial impact the EUDR could have on it.⁹² The

⁸⁶ *Ikanos Commc'ns, Inc.*, 681 F.3d at 120 (2d Cir. 2012); *Jianpu Tech. Inc.*, 2020 WL 5757628, at *13 (failure to disclose recent and imminent changes in regulation held to violate Item 303 and Sections 11 and 12(a)).

⁸⁷ See, e.g., Humane Society International, *Deforestation and Climate Change*, <https://hsi.org.au/international-wildlife/deforestation-and-climate-change/> (last visited June 14, 2024); World Wildlife Fund, *The Effects of Deforestation*, <https://www.wwf.org.uk/learn/effects-of/deforestation> (last visited June 14, 2024).

⁸⁸ Regulation (EU) 2023/1115 of the European Parliament and of the Council, 2023 O.J. (L 150/206), Art. 38(2) (enacted 31 May 2023).

⁸⁹ *Id.* Art. 1(1) (“This Regulation lays down rules regarding the placing and making available on the Union market as well as the export from the Union of relevant products, as listed in Annex I, that contain, *have been fed with* or have been made using relevant commodities, namely *cattle*, cocoa, coffee, oil palm, rubber, *soya* and wood . . .”) (emphasis added).

⁹⁰ *Id.* Art. 3, Art. 4 & Annex II.

⁹¹ *Id.* Art. 25(2)(a)-(c).

⁹² March 2024 F-4 Registration Statement at 4; *id.* at 123 (summarizing June 22, 2023 U.S. Senate Finance Committee testimony of JBS’s Global Chief, Sustainability Officer, Jason Weller, who pointed out that “[t]he United States is less significant, behind both China and

Group’s latest Offering Documents merely hint at a potential failure to timely meet the EUDR requirements, without providing any assurance of timely compliance, despite compliance coming due this year.⁹³ Most notably, the Group mentions “fines and other penalties,” but does not clearly disclose that it may lose access to one of its primary markets. Yet, JBS has long been linked to illegal deforestation, having been sued over the issue in 2009, and it is currently again being sued by Brazilian authorities for continuing to purchase product from deforested areas.⁹⁴ Thus, whether or not the Group can continue to lawfully sell its products in the European Union beginning December 31, 2024 is material; if the Group is on the verge of losing access to an export market that constitutes one-tenth of its business, that is self-evidently something reasonable investors would want to know about. The Group surely should know by now if it can timely comply, yet it has left open the hypothetical possibility of non-compliance—or of complying only “eventually.”⁹⁵

The Group’s failure to sufficiently disclose the “material effects”—loss of the EU market, fines, product confiscation, and more—that noncompliance with the EUDR “may have” on its “capital expenditures, earnings and competitive position,” and the risk the EUDR presents given its potential noncompliance, apparently violates Item 101 of Regulation S-K. Likewise, the Offering Documents failure to disclose the “material factor” of the Group’s imminent EUDR compliance problems apparently violates Item 105 of Regulation S-K as the consequences of failure to timely comply make “an investment in the registrant or offering speculative or risky,” and the Group fails to adequately explain “how each risk affects the registrant or the

the EU, in imports of major forest risk commodities, such as soy beef, and palm oil.”) (emphasis added); see also Chain Reaction Research, *JBS, Marfrig, and Minerva Unlikely Compliant with Upcoming EU Deforestation Law*, at 1-2 (November 2022), https://www.banktrack.org/download/jbs_marfrig_and_minerva_unlikely_compliant_with_upcoming_eu_deforestation_law/jbsmarfrigandminervaunlikelycompliantwithupcomingeudeforestationlaw1.pdf (noting that the products JBS sells in the European Union, including beef and leather, are subject to the EUDR, and that the company is unlikely to be able to comply).

⁹³ March 2024 F-4 Registration Statement at p 44 (“If we are unable to ensure that we are in compliance with the EUDR, we *may be* subject to fines and other penalties.”) (emphasis added); *id.* at 123 (“If we are unable to ensure that we are in compliance with the EUDR and deforestation regulations in the UK, we may be subject to fines, and other penalties that may adversely affect our image, reputation, business, financial condition and results of operations.”).

⁹⁴ Manuela Andreoni, *Brazilian State Seeks Millions in Environmental Damages From Giant Meatpacker*, N.Y. TIMES (Dec. 20, 2023), <https://www.nytimes.com/2023/12/20/climate/amazon-deforestation-jbs.html>.

⁹⁵ March 2024 F-4 Registration Statement at 123; *Jianpu Tech. Inc.*, 2020 WL 5757628, at *12 (Defendants’ disclosures framed as “mere hypotheticals” imply “that the risk of regulation is a theoretical one, rather than – as Plaintiff alleges – a risk that has already materialized in the marketplace. ‘Cautionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired.’”) (quoting *Rombach*, 355 F.3d at 173).

securities being offered.”⁹⁶ These disclosure failures also appear to violate Item 303 of Regulation S-K, as they fail to sufficiently describe “known trends or uncertainties that have had or that the registrant reasonably expects will have a material . . . impact on net sales or revenues or income from continuing operations.”⁹⁷ These apparent violations of Items 101, 105 and 303 of Regulation S-K, in turn, are apparent violations of Sections 11 and 12(a). Moreover, because the Group makes some disclosures about the EUDR but omits material information from them, these statements also appear to be materially misleading in apparent violation of Rule 10b-5.

V. Conclusion

The SEC should not issue a notice of effect for the Group’s recently filed Offering Documents without first investigating the serious legal deficiencies alleged in this Complaint. To do so would risk establishing an unlawfully low standard for the adequacy of disclosures that could undermine the integrity of the disclosure standards required for public companies and encourage companies to provide minimal or insufficient disclosures. The SEC must, instead, hold companies such as those in the Group to a disclosure standard that fully reflects the risks to the companies and their investors stemming from foreseeable noncompliance with the companies’ own commitments and standards and with regulations concerning environmental, social, and governance matters — in particular, animal welfare, climate, and environmental-related matters.

HSUS and the Center, therefore, urge the SEC to scrutinize all claims related to the Group’s apparently misleading and deceptive representations and omissions, particularly in the context of its proposed IPO. The potential impact of these alleged violations, if confirmed upon investigation, necessitates rigorous action by the SEC to ensure the accuracy of information provided to investors and to maintain the integrity of the financial market. During the pendency of the SEC’s investigation, the Commission should refuse to declare the Offering Documents effective.

HSUS and the Center are ready to provide support and information to assist the SEC in this important matter and may supplement this Complaint with additional information at a later date. We look forward to your prompt and decisive action.

⁹⁶ 17 C.F.R. § 229.105(a), (b).

⁹⁷ *Ikanos Commc'ns, Inc.*, 681 F.3d at 120; *Jianpu Tech. Inc.*, 2020 WL 5757628, at *13.

Respectfully submitted,

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Enclosures:

- Attachment 1: List of Federal Violations for JBS and Pilgrim's
- Attachment 2: HSUS SEC Complaint re: Pilgrim's Pride Corp.
- Attachment 3: Complaint, New York v. JBS USA Food Co.
- Attachment 4: Final Decision, Nat'l Advertising Div. Case # 7135
- Attachment 5: Nat'l Advertising Review Board (NARB) Panel 313
- Attachment 6: Compliance Proceeding from NAD Case Report #7135

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