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Brian Moynihan  
Chief Executive Officer  
Bank of America  
100 North Tryon Street  
Charlotte, NC 28255

Dear Mr. Moynihan,

Consumers' Research represents the interests of household consumers in all areas of consumer spending. It is an independent educational 501(c)(3) nonprofit organization whose mission is to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

Food production and food availability on store shelves are critical issues for consumers. This places a greater emphasis on action taken by the New York Attorney General's office which highlighted a major risk to companies directly involved in financing and supporting the national food supply chain.

Recently, JBS USA Food Company (JBS) was sued by New York Attorney General Letitia James over public ESG statements and sustainability documents. The lawsuit alleged JBS's public statements and sustainability documents set unattainable goals regarding net-zero emissions—goals that could not be met so long as JBS continued to produce beef products—and that the JBS commitments misled consumers.

In her public statement announcing the JBS lawsuit, Attorney General James wrote:

“When companies falsely advertise their commitment to sustainability, they are misleading consumers and endangering our planet. JBS USA's greenwashing exploits the pocketbooks of everyday Americans and the promise of a healthy planet for future generations. My office will always ensure that companies do not abuse the environment and the trust of hardworking consumers for profit.”

**Consumers' Research is concerned that it is only a matter of time before the banks that finance food supply production companies, like Bank of America, are subjected to state actions targeting their unrealistic net-zero commitments, as has happened with JBS.**

Below you will find claims cited by General James in the lawsuit against JBS and similar claims made by Bank of America:

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1) JBS Claim:

“JBS was also the first major global protein company to set a net-zero GHG emissions by 2040 target, covering our scope 1, scope 2 and scope 3 emissions.”

Bank of America Claim:

“The organization’s objectives to reach Net Zero by 2050 or sooner, in line with science-based pathways to limit warming to 1.5°C, with clearly defined and measurable interim and long-term targets and strategic timelines as well as priority financing strategies of Net Zero transition action to enable real economy emissions reduction.”

2) JBS Claim

“The SBTi [Science Based Targets initiative] recognized the Net Zero Commitment of JBS.”

Bank of America Claim:

“We believe achieving Net Zero by 2050 on a global scale is a fundamental component of limiting global temperature rise to 1.5oC above pre-industrial levels, per the Paris Agreement.”

3) JBS Claim

“Leading change across the food industry and achieving [JBS’s] goal of net zero by 2040 will be a challenge. Anything less is not an option.”

Bank of America Claim:

“As we continue to enhance our approach to reaching our Net Zero goal, we track and monitor voluntary and regulatory expectations and participate in climate-related collaborations to advocate for policies that support our strategy. Through our engagement, we are focused on supporting the development of comprehensive sustainability reporting standards, allowing for more consistent and comparable disclosure. We also encourage policies that support the infrastructure and technological advances needed to effectively decarbonize our economy, while promoting a just and balanced transition. We have a long history of leading and participating in public-private



and cross-sector coalitions and collaborations to drive progress in these areas.”

4) JBS Claim:

“JBS will achieve Net Zero greenhouse gas emissions, reducing its direct and indirect (scopes 1, 2 and 3) emissions.”

Bank of America Claim:

“Reduce GHG emissions by 75% by 2030 (Scopes 1 and 2, location-based) from 2010 baseline.”

5) JBS Claim:

“[JBS is] setting time-bound, science-based targets and backing them up with \$1 billion in capital over the next decade.”

Bank of America Claim:

“We set that goal in 2021, when we also set out greenhouse gas emission and environmental targets for our operations and supply chain. To help our clients meet their plans, we also set a target of mobilizing and deploying \$1.5 trillion towards sustainable finance by 2030.”

**As this comparison makes plain, Bank of America’s statements on emissions reduction goals expose the company to the same type of litigation JBS currently faces.**

Costly litigation harms the consumer. And that is doubly so when one outcome of the litigation threatens food supply chain financing in order to meet climate commitments that should never have been made in the first place.

**Rather than continuing to mislead consumers with unrealistic goals while trying to comply with impossibly attainable emissions standards or trying in vain to ward off the risks of litigation by decreasing financing in politically disfavored industries, Consumers’ Research urges Bank of America to reassess its ESG statements and sustainability policies, disavow the types of positions that subjected JBS to litigation, and recommit to providing banking services to the companies that ensure Americans have affordable food on the table.**

Failure to do so not only exposes Bank of America to litigation risk from Attorneys General like Letitia James, it could also expose the company, its executives, and its directors to legal liability



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for refusing to recant these unfounded marketing claims while Bank of America was aware of the problem and still had the opportunity to reduce or eliminate their exposure. As we have witnessed in a number of shareholder derivative suits recently, shareholders and elected officials have become increasingly litigious in cases where corporations have put at risk or sacrificed returns in order to engage in so-called "virtue signaling."

The JBS lawsuit by General James has made plain that there is risk lurking in the ESG and sustainability commitments of countless financial companies. There is no better time than now for Bank of America to course correct, remove this ESG risk, and pivot back to a pro-consumer approach to its business.

Sincerely,

*Will Hild*

Will Hild  
Executive Director

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