

Office of the Attorney General



JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

September 13, 2023

Dear Financial Service Provider:

You are receiving this letter because you are a signatory of the Net Zero Financial Service Providers Alliance (NZFSPA), “a global group of Service Providers committed to supporting the goal of global net zero greenhouse gas emissions by 2050 or sooner.”¹

As the chief legal officers of our states, we are writing to express our concern that your NZFSPA commitments may violate state and federal law, including antitrust laws and consumer protection laws. Although many NZFSPA signatories are direct competitors with each other, they nevertheless commit to using their market influence to enforce their collective climate agenda in the broader economy and to “[w]ork in coordination” with other UN-convened “Net Zero” groups.² Further, these pressure tactics are backed up by substantial market power. For example, all of the “Big Four” accounting firms—which control approximately three-fourths of the market share in the accounting industry³—are NZFSPA signatories and founding members.⁴ Accordingly, your joint commitments under the NZFSPA may run afoul of United States antitrust law and its state equivalents, which broadly prohibit business competitors from engaging in concerted action in restraint of trade or commerce. In addition, the actions required by your NZFSPA commitments may create consumer-disclosure requirements that your companies are failing to meet.

¹ Commitment, Net Zero Financial Service Providers Alliance, <https://www.netzeroserviceproviders.com/our-commitment>.

² *Id.*; UN High-level Climate Change Champions Approve Exchange Group’s Net Zero Target Framework (“UN High-level”), Net Zero Financial Service Providers Alliance, <https://www.netzeroserviceproviders.com/category/press>.

³ *Accounting Giants Continue to Dominate the Market Despite Pandemic*, International Accounting Bulletin, <https://www.internationalaccountingbulletin.com/news/accounting-giants>.

⁴ Signatories, Net Zero Financial Service Providers Alliance, <https://www.netzeroserviceproviders.com/signatories>; UN High-level, *supra* note 2.

We are also writing to request information that will help us better understand your NZFSPA commitments and related policies. The information that you provide will help us refine our analysis and determine the most appropriate response.

I. Legal Concerns Regarding Your NZFSPA Commitments

As signatories of the NZFSPA, you belong to a cooperative syndicate of financial service providers, including “index providers, auditors, stock exchanges[,] and research, rating and data providers.”⁵ Together, NZFSPA signatories pledge “to accelerate the transition towards global net zero greenhouse gas (GHG) emissions . . . and to help deliver the goals of the Paris Agreement.”⁶

Signatories make several concrete commitments involving coordinated efforts with built-in accountability to achieve these overarching goals. For example, signatories expressly commit to “[a]lign all relevant services and products to achieve net zero greenhouse gas emissions by 2050 or sooner, scaling and mainstreaming Paris Agreement-alignment into the core of [their] business.”⁷ To ensure “full alignment,” signatories must set a recurrent “interim target” (at least once every five years) that is “consistent with a fair share of the 50% global reduction in carbon emissions needed by 2030.”⁸ Signatories further agree to “set[] science-based emissions reduction targets across all operational emissions (Scopes 1 and 2 and, where material, 3) in line with 1.5°C emissions pathways” and to “[s]et interim science-based reduction targets within 12 months of joining for no later than 2030 across all operational emissions.”⁹

Signatories also expressly agree to coordinate their market pressure to “[a]dvance” the NZFSPA’s “efforts by proactively engaging with stakeholders and policy-makers on corporate and industry action, as well as public policies, that support a net zero transition of economic sectors.”¹⁰ Further, signatories vow to pressure other companies by “[c]onsistently rais[ing] with . . . key stakeholders the importance and implications of setting net zero targets and strategies across Scopes 1, 2 and 3 emissions.”¹¹

In addition to collaborating, signatories agree to coordinate their agenda with numerous other climate-activist pressure groups. In particular, signatories agree to “[w]ork in coordination with . . . the Net Zero Asset Owner Alliance, Paris Aligned Investment Initiative, Net Zero Bankers Alliance and the Net Zero Asset Managers

⁵ Q&A, Net Zero Financial Service Providers Alliance, <https://www.netzeroserviceproviders.com/questions-answers>.

⁶ Commitment, *supra* note 1.

⁷ *Id.* (footnote and internal marks omitted).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Initiative.”¹² Further, the NZFSPA Exchange Group (which is “part of the NZFSPA”) is an “official partner” of Race to Zero,¹³ which is a global coalition that promotes “rigorous and immediate action to halve global emissions by 2030” to create a “zero carbon world.”¹⁴ Partners of Race to Zero enforce these ambitious goals by “acting collectively . . . across global capital markets.”¹⁵ The NZFSPA is also a member of the Glasgow Financial Alliance for Net Zero (GFANZ),¹⁶ which is “the world’s largest coalition of financial institutions committed to transitioning the global economy to net-zero greenhouse gas emissions.”¹⁷

To impose “accountability” and ensure that signatories “follow[] through on their commitments,” the NZFSPA requires signatories to “report publicly on actions being taken and their progress against interim and long-term targets.”¹⁸ These accountability standards are not merely aspirational but are expressly designed to “ensure that . . . signatories comply with the commitments made[.]”¹⁹

The NZFSPA commitment includes an acknowledgment stating that “[t]he parties making this Commitment do so subject to any legal, regulatory, professional standards and professional or ethical obligations that apply to them.”²⁰ This acknowledgment does not alleviate our concerns. Regardless of whether they acknowledge it, NZFSPA signatories are necessarily “subject to” applicable laws and regulations, including the laws and regulations that we are bound to enforce as the attorneys general of our states. Your acknowledgment does not in any way suggest a disavowal of any commitments that fail to comply with applicable law.

As stated previously, both federal and state law broadly prohibit business competitors from engaging in concerted action in restraint of trade or commerce.²¹ Accordingly, collective agreements to “restrict production, sales, or output” are almost always illegal.²² Similarly, “an agreement among competitors not to do business with targeted individuals or businesses may be an illegal boycott, especially if the group of competitors working together has market power.”²³ In addition, our states all have

¹² *Id.*

¹³ UN High-level, *supra* note 2.

¹⁴ Race to Zero: Halving Emissions by 2030, Climate Champions, <https://climatechampions.unfccc.int/system/race-to-zero>.

¹⁵ Meet Our Partners, Climate Champions, <https://racetozero.unfccc.int/meet-our-partners>.

¹⁶ The Alliances and GFANZ, Glasgow Financial Alliance for Net Zero, <https://www.gfanzero.com/membership>.

¹⁷ About Us, Glasgow Financial Alliance for Net Zero, <https://www.gfanzero.com/about>.

¹⁸ Q&A, *supra* note 7.

¹⁹ *Id.*

²⁰ Commitment, *supra* note 1.

²¹ *See, e.g.*, 15 U.S.C. § 1; Fla. Stat. § 542.18; W. Va. Code § 47-18-3(a).

²² Price Fixing, Fed. Trade Comm’n, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing>; *see also Times-Picayune Pub. Co. v. United States*, 345 U.S. 594, 625 (1953).

²³ Group Boycotts, Fed. Trade Comm’n, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/group-boycotts>; *see also Fed. Mar. Comm’n v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238, 250 (1968) (holding that “any agreement by a group of competitors to boycott a particular buyer or group of buyers is illegal per se”).

consumer-protection statutes that broadly prohibit unfair or deceptive practices in trade or commerce (“UDAP laws”). Many of these statutes also expressly protect businesses.²⁴

The substantial commitments you have made as NZFSPA signatories give us pause, as they do not appear consistent with our laws protecting consumers. Although many of you are direct competitors with one another, you have collectively agreed to coordinate the “alignment” of your products and services under the guise of a shared ideological vision.²⁵ By aligning your products and services with the Paris Agreement’s exacting specifications, you are necessarily taking actions to artificially restrict the supply of goods and services in the real economy. These restraints on trade may inhibit innovation, suppress output, and harm consumers.²⁶

Equally troubling is your commitment to extend your collective reach by pressuring other companies to adopt “net zero targets and strategies” across the value chain.²⁷ Given the extraordinary market power of participants in the agreement, many companies may have no choice but to comply with your policy preferences, requiring them to restrict further the variety and output of goods and services that are not “aligned” with your activist climate agenda. Moreover, many of the companies you influence will be forced to stop dealing with other companies whose practices are inconsistent with your standards. Considering your significant market influence, these practices could amount to a widespread boycott of entire industries—particularly those involving critical energy components like oil, coal, and gas—that do not align with your syndicate’s collective targets but are nevertheless vital to the American economy and national security. The problem is compounded as other “Net Zero” groups you have promised to coordinate with engage in parallel discrimination, effectively multiplying the market power of all net zero participants across various sectors to deprive disfavored companies of economic opportunities.

We are also concerned that you may be misleading consumers and other persons covered by UDAP laws by failing to disclose material facts regarding your apparent conflicts of interest and the viability of your climate agenda. Your customers reasonably expect you to perform certain financial or accounting services objectively

²⁴ See, e.g., Fla. Stat. § 501.202(2) (protecting “legitimate business enterprises” from “unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce”); Tex. Bus. & Com. Code § 17.45(4), § 17.45(10), § 17.46(2) (protecting corporations and other business consumers from “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce”).

²⁵ Commitment, *supra* note 1.

²⁶ See, e.g., *Polygram Holding, Inc. v. F.T.C.*, 416 F.3d 29, 37 (D.C. Cir. 2005) (internal marks omitted) (quoting *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 107–08 (1984)) (recognizing that “restrictions on price and output are the paradigmatic examples of restraints of trade that the Sherman Act was intended to prohibit”); see also *F.T.C. v. Ind. Fed’n of Dentists*, 476 U.S. 447, 459 (1986) (“A refusal to compete with respect to the package of services offered to customers, no less than a refusal to compete with respect to the price term of an agreement, impairs the ability of the market to advance social welfare by ensuring the provision of desired goods and services to consumers at a price approximating the marginal cost of providing them.”).

²⁷ Commitment, *supra* note 1.

and independently. We are unsure whether you have properly advised these consumers that your services are compromised by your commitment to “[a]llign all relevant services” with an activist climate agenda in accordance with the Paris Agreement.²⁸ Even if you have provided your customers with some information about your commitments, that may be insufficient or misleading. For example, your NZFSPA commitments are ostensibly premised on your “expectation that governments will follow through on their commitments to ensure the objectives of the Paris Agreement are fulfilled.”²⁹ But governments are not following through on their commitments. Indeed, none of the world’s biggest carbon emitters is on track to meet the Paris Agreement’s objectives.³⁰ And even if governments followed through, the Paris Agreement's objectives would still not be fulfilled.³¹ Consumers (including businesses) who purchase your “aligned” products and services should not be misled about the faulty basis for that alignment or the impact of your efforts.

II. Requests for Information Regarding Your NZFSPA Commitments

In light of our legal concerns arising from the acts and omissions described above, we ask that you please provide the following information:

- Please describe in detail all communications related to your commitments to NZFSPA, including communications between you and any other NZFSPA signatories or between you and any partners or affiliates of NZFSPA.
- If you are a member of the NZFSPA Exchange Group, please describe in detail any communications related to your partnership with Race to Zero, including any actions you have taken to “halve global emissions by 2030” or establish a “zero carbon world.”
- As a member of GFANZ, please describe in detail any communications related to any “interim targets” that you have established or have attempted to establish “in line with the UN Race to Zero criteria.”
- Please describe any communications related to your decision to become a signatory of NZFSPA. If you are a founding member, please describe any communications relating to your decision to help found the organization.

²⁸ *Id.* (footnote and internal marks omitted).

²⁹ Q&A, *supra* note 7.

³⁰ Max Bearak & Nadja Popovich, *The World is Falling Short of Its Climate Goals. Four Big Emitters Show Why*, N.Y. Times (Nov. 8, 2022).

³¹ In fact, implementation of “[c]urrent national climate plans – for 193 Parties to the Paris Agreement taken together – would lead to a sizable *increase* of almost 11% in global greenhouse gas emissions by 2030, compared to 2010 levels.” *For a Livable Climate: Net-zero Commitments Must be Backed by Credible Action*, United Nations, <https://www.un.org/en/climatechange/net-zero-coalition> (emphasis added).

- Please describe in detail any actions that you have taken, or any actions that you have refrained from taking, to “align all relevant services and products to achieve net zero greenhouse gas emissions by 2050 or sooner” and to incorporate “Paris Agreement-alignment” into the “core” of your business.
- Please describe in detail any actions that you have taken or any actions that you have refrained from taking to establish and meet any emissions reduction targets, including targets relating to your operational emissions, that are “consistent with a fair share of the 50% global reduction in carbon emissions needed by 2030,” or that are “in line with 1.5°C emissions pathways.”
- Please describe in detail any communications or engagements you have had with other companies or businesses that are not NZFSPA's signatories regarding the “importance and implications of setting net zero targets and strategies across Scopes 1, 2, and 3 emissions.”
- Please describe in detail any actions you have taken to advance your NZFSPA commitments by “engaging with stakeholders and policymakers” regarding public policy and corporate and industry action.
- Please explain any ways in which you have materially deviated from your NZFSPA commitments. If the deviation is based on the need to comply with a law, regulation, or professional or ethical obligation, please identify the law, regulation, or professional or ethical obligation, and please explain why you believe that the commitment from which you have deviated cannot be fulfilled in a lawful, professional, or ethical manner.
- Please explain any ways in which you have materially deviated from your ordinary business practices as a result of or in furtherance of your NZFSPA commitments.
- Please describe any information or evidence that supports your “expectation that governments will follow through on their commitments to ensure the objectives of the Paris Agreement are fulfilled.”

Please respond to these requests by October 13, 2023.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Skrmetti". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jonathan Skrmetti
Tennessee Attorney General and Reporter



Steve Marshall
Alabama Attorney General



Daniel Cameron
Kentucky Attorney General



Treg R. Taylor
Alaska Attorney General



Jeff Landry
Louisiana Attorney General



Tim Griffin
Arkansas Attorney General



Lynn Fitch
Mississippi Attorney General



Raúl Labrador
Idaho Attorney General



Andrew Bailey
Missouri Attorney General



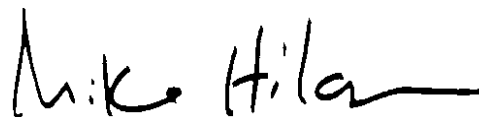
Todd Rokita
Indiana Attorney General



Austin Knudsen
Montana Attorney General



Brenna Bird
Iowa Attorney General



Mike Hilgers
Nebraska Attorney General




Kris W. Kobach
Kansas Attorney General



John M. Formella
New Hampshire Attorney General



Sean D. Reyes
Utah Attorney General



Gentner Drummond
Oklahoma Attorney General



Jason S. Miyares
Virginia Attorney General



Dave Yost
Ohio Attorney General



Patrick Morrissey
West Virginia Attorney General



Alan Wilson
South Carolina Attorney General



Bridget Hill
Wyoming Attorney General