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Facebook’s Libra: The Social Media Giant’s Pursuit of Global Financial Inclusion

I. INTRODUCTION

Millions of people across the globe gained access to financial services over the last decade; however, there are still over a billion adults without access to financial services and accounts.¹ As more people and organizations begin to focus on financial inclusion—the proportion of individuals using financial services—global and national efforts to expand financial inclusion are starting to pay off.² This progress has been driven by digital payments, government policies, and financial services accessible through mobile phones and the internet.³

Digital currency emerged in 2009⁴ and has continually grown in acceptance and use in the global financial markets.⁵ And in June of 2019, Facebook—one of the world’s largest tech companies—announced its plans to launch its own private cryptocurrency, Libra.⁶ The company claims Libra will make sending money online more affordable and efficient while also improving access to financial services, particularly for individuals without bank accounts or with little to no access to

1. A. DEMIRGÜÇ-KUNT ET AL., WORLD BANK GRP., THE GLOBAL FINDEX DATABASE 2017: MEASURING FINANCIAL INCLUSION AND THE FINTECH REVOLUTION 4 (2018), <https://globalindex.worldbank.org> [<https://perma.cc/97XH-76KL>].

2. *Id.* at 1–2 (reporting that 69% of adults worldwide have an account at a financial institution or through a mobile money provider which has increased from 62% in 2014 and 51% in 2011).

3. Her Majesty Queen Máxima of the Netherlands, *Foreword* to WORLD BANK GRP., THE GLOBAL FINDEX DATABASE 2017: MEASURING FINANCIAL INCLUSION AND THE FINTECH REVOLUTION, at v (2018), <https://globalindex.worldbank.org> [<https://perma.cc/97XH-76KL>].

4. U.N. DEP’T OF ECON. & SOC. AFFAIRS, WORLD ECONOMIC AND SOCIAL SURVEY 2018: FRONTIER TECHNOLOGIES FOR SUSTAINABLE DEVELOPMENT, at 37, U.N. Doc. ST/ESA/370, U.N. Sales No. E.18.II.C.1 (2018).

5. *See* Her Majesty Queen Máxima of the Netherlands, *supra* note 3 (“Dozens of national governments have adopted policies to expand financial inclusion. These and other global and national efforts are paying off.”).

6. *See* LIBRA ASS’N MEMBERS, AN INTRODUCTION TO LIBRA 1 (2019), <https://libra.org/en-US/white-paper/> [<https://perma.cc/V2KX-JFSD>] [hereinafter LIBRA WHITE PAPER] (“This document outlines our plans for a new decentralized blockchain, a low-volatility cryptocurrency, and a smart contract platform that together aim to create a new opportunity for responsible financial services innovation.”).

banking services.⁷ Libra will reduce the customary reliance on powerful gatekeepers and fee-charging intermediaries in order to streamline the payment process.⁸ Because of this, many fear Libra, and cryptocurrencies in general, could replace the dollar.⁹ However, Christian Catalini, Facebook's lead economist working on Libra, reiterated to reporters that Libra is designed to complement fiat currencies—not substitute them.¹⁰

Facebook's Libra announcement immediately drew attention from policymakers and regulators across the world.¹¹ Lawmakers have expressed fears that cryptocurrencies could be used to launder money, finance terrorism, or destabilize central bank fiat currencies.¹² Financial institutions and lawmakers have struggled over how to regulate cryptocurrencies since their inception, but Libra poses an additional level of complexity due to its affiliation with one of the most powerful social media companies in the world.¹³ The question is not whether Libra could be successful in reaching the unbanked, but whether Libra can become a

7. *Id.* at 3.

8. *See id.* (“New product innovation and additional entrants to the ecosystem will enable the lowering of barriers to access and cost of capital for everyone and facilitate frictionless payments for more people.”).

9. Kurt Wagner, *Facebook Says Central Banks Have Nothing to Fear from Libra*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2019-09-17/facebook-says-central-banks-have-nothing-to-fear-from-libra> [<https://perma.cc/3VYV-RDJR>] (last updated Sept. 17, 2019, 10:16 AM) (addressing fears that Libra could replace sovereign currencies from the U.S. dollar to the Euro and threaten central banks' control over money creation).

10. *Id.*

11. Kate Berry, *Scrutinizing Facebook: Why Did Washington Mobilize So Quickly Against the Social Media Giant's Crypto Plans?*, AM. BANKER (Aug. 2019), <https://www.americanbanker.com/news/why-washington-mobilized-so-quickly-against-facebooks-crypto-plans> [<https://perma.cc/Y8UA-YENH>] (analyzing regulators' and lawmakers' quick responses to the announcement of Libra and the concerns about the cryptocurrency).

12. Lael Brainard, Governor, Fed. Reserve, *Cryptocurrencies, Digital Currencies, and Distributed Ledger Technologies: What Are We Learning?*, Address at the Decoding Digital Currency Conference (May 15, 2018) (explaining the Federal Reserve's research findings on cryptocurrencies, distributed ledger technology, and central bank issued digital currencies and their potential implications for payments policy, supervision and regulation, financial stability, monetary policy, and the provision of financial services).

13. *See* Gregory Barber, *Everyone Wants Facebook's Libra to Be Regulated. But How?*, WIRED (July 18, 2019, 7:00 AM), <https://www.wired.com/story/everyone-wants-facebooks-libra-regulated-but-how/> [<https://perma.cc/HNX8-ZS4E>] (expressing various representative's antitrust concerns due to the “market dominance of Messenger and WhatsApp,” how the cryptocurrency should be regulated, and “whether products or individuals would be banned from Calibra for political reasons”).

source of financing that users can trust in spite of widespread concerns over privacy and Facebook's market power.¹⁴

This Note addresses the problem of the unbanked population, both in the United States and globally, and discusses whether Libra will successfully overcome the opposition it faces from regulators, financial institutions, and lawmakers in order to reach its objective of global financial inclusion. Part II provides a brief overview of cryptocurrencies and their development.¹⁵ Part III explains the structure of Libra.¹⁶ Part IV examines the legislative and regulatory reactions to Libra.¹⁷ Part V discusses the unbanked population.¹⁸ Part VI concludes by emphasizing Libra's potential and the opposition the cryptocurrency faces.¹⁹

II. THE CRYPTOCURRENCY SYSTEM AND ITS DEVELOPMENT

A. *Development of Cryptocurrencies*

The first cryptocurrency ever established, Bitcoin, was introduced in 2009 during the Great Recession, the largest global economic crisis since the Great Depression in 1929—a time when many Americans were distrustful of financial institutions and regulators.²⁰ Due to the technology's unfamiliar, complex system, early cryptocurrencies were initially greeted with skepticism from regulators and financial institutions.²¹ However, it was not until 2010 that the first public cryptocurrency exchanges appeared, thereby creating an actual market

14. Ross Buckley et al., *Regulating Libra*, HARV. L. SCH. F. ON CORP. GOVERNANCE AND FIN. REG. (July 10, 2019), <https://corpgov.law.harvard.edu/2019/07/10/regulating-libra/> [<https://perma.cc/J8VZ-ASE9>] (“The Libra White Paper suggests an information barrier between Facebook and this data in Libra, but Facebook’s track record on data usage renders such promises less than credible.”).

15. *See infra* Part II.

16. *See infra* Part III.

17. *See infra* Part IV.

18. *See infra* Part V.

19. *See infra* Part VI.

20. Rebecca M. Bratspies, Article, *Cryptocurrency and the Myth of the Trustless Transaction*, 25 MICH. TECH. L. REV. 2, 14–19 (2018) (arguing that cryptocurrencies require consumers to reallocate their trust from the financial market to less transparent and reliable parties).

21. *See id.* at 14 (claiming that the first bitcoins accented “a profound disaffection with financial markets and regulators”).

for this new technology.²² Around this time, dozens of similar cryptocurrencies were introduced, generating new market competition.²³ In 2012, WordPress became the first major merchant to accept a cryptocurrency as a form of payment.²⁴ Expedia and Microsoft soon followed WordPress's lead.²⁵

Now, more than ten years after the launch of the first cryptocurrency, there are over 5,000 different cryptocurrencies in the market.²⁶ New coins are introduced almost daily.²⁷ Seventeen cryptocurrencies have market capitalizations above \$1 billion,²⁸ which is seven more than the ten in 2018 to have such a market capitalization.²⁹ The three largest cryptocurrencies currently in the market are Bitcoin, Ethereum, and Ripple's XRP.³⁰ Together, they account for approximately two-thirds of the overall cryptocurrency market, with Bitcoin alone amounting to 60% of the cryptocurrency market.³¹

B. *How Cryptocurrencies Work and Interact with Financial Institutions*

Although cryptocurrencies began with many supporters, others struggled to understand the technology behind the digital exchange system.³² Traditional forms of monetary exchange rely on formal institutions, regulatory systems, and face-to-face interactions.³³ This

22. *Lesson One: A Brief History of Cryptocurrency*, DIGITAL GOLD CLUB, <https://digitalgoldclub.com/2017/12/19/lesson-1-a-brief-history-of-cryptocurrency/> [<https://perma.cc/2JJ9-SJXP>] (last visited Feb. 9, 2020).

23. *Id.*

24. *Id.*

25. *Id.*

26. *See All Cryptocurrencies*, COINMARKETCAP, <https://coinmarketcap.com/all/views/all/> [<https://perma.cc/EKM4-X87L>] (last updated Feb. 7, 2020) (providing a database of all cryptocurrencies).

27. *See id.* (providing a database of all cryptocurrencies).

28. *Id.*

29. Bratspies, *supra* note 20, at 15.

30. *All Cryptocurrencies*, *supra* note 26; *see generally* BITCOIN, <https://bitcoin.org/en/> [<https://perma.cc/RZY9-GSGL>] (last visited Feb. 9, 2020); ETHEREUM, <https://ethereum.org> [<https://perma.cc/PC99-XAUP>] (last visited Feb. 9, 2020); RIPPLE, <https://www.ripple.com/xrp/> [<https://perma.cc/E2F9-CSXL>] (last visited Feb. 9, 2020).

31. *See All Cryptocurrencies*, *supra* note 26 (estimating the total market cap to be \$245,358,335,055 as of February 2020).

32. *See* Bratspies, *supra* note 20, at 14–15 (recounting the rise of Bitcoin and the “profound disaffection” met by financial markets and regulators).

33. *See* U.N. DEP'T OF ECON. & SOC. AFFAIRS, *supra* note 4 (exploring the impact of new technologies on sustainable development).

form of exchange requires a customer's complete trust in these formal institutions and the existing regulatory system to ensure their privacy.³⁴ The traditional financial system prevents fraud and keeps track of the ownership of funds through the use of ledgers, which are used to store and summarize the records of the balance of every account in every bank.³⁵ For any monetary transaction, the buyer of a product must have sufficient funds, and those funds can only be used once to prevent "double spending."³⁶ Following a transaction, the corresponding ledgers are modified to signify the withdrawal and deposit of funds.³⁷

Rather than instilling trust in a central institution, cryptocurrencies allow the participants to contribute to the system's security.³⁸ In 2009, a new ledger system was proposed which would rely on cryptography³⁹ to enable electronic transactions.⁴⁰ This public distributed ledger system is now known as cryptocurrency.⁴¹ Cryptocurrencies rely on mathematical proofs to build blockchains.⁴² Every cryptocurrency transaction that occurs is encrypted and recorded in the blockchain.⁴³ These blockchains must be built before they become accessible to non-developing participants.⁴⁴ The first participant to validate a block of transactions and transmit the solution to the network gains a monetary reward.⁴⁵ Then, the proposed block is individually

34. *Id.*

35. *Id.*

36. "Double Spending" means spending the same funds more than once. *Id.*

37. *Id.*

38. *Id.*

39. LIBRA LEXICON, <https://libra.org/en-US/white-paper/#conclusion> [<https://perma.cc/V2KX-JFSD>] (defining cryptography as a mechanism for protecting the integrity of information that is a key component of blockchain technology).

40. U.N. DEP'T OF ECON. & SOC. AFFAIRS, *supra* note 4.

41. Bratspies, *supra* note 20 (noting that cryptocurrencies were introduced by Satoshi Nakamoto in his whitepaper that launched Bitcoin).

42. Blockchains are the technology providing the foundation for cryptocurrency. See Mike Orcutt, *Ethereum's Smart Contracts Are Full of Holes*, MIT TECH. REV. (Mar. 1, 2018), <https://www.technologyreview.com/s/610392/ethereums-smart-contracts-are-full-of-holes/> [<https://perma.cc/ZZZT-4QNQ>] (exploring the technology behind smart contracts and their unknown vulnerabilities). A blockchain is a shared accounting ledger that can safely store transaction records on a peer-to-peer network using cryptography to secure the ledger from tampering. See *id.*

43. *Id.*

44. See U.N. DEP'T OF ECON. & SOC. AFFAIRS, *supra* note 4 ("[E]very participant [in a blockchain] therefore works to build a single public ledger of transactions and constantly verifies its validity.").

45. *Id.*

verified by each participant.⁴⁶ Once a majority of the network believes the block is valid, the block, with the transactions it contains, becomes part of the blockchain.⁴⁷ The blockchain ledger of transactions is then made public for anyone to see.⁴⁸

Although blockchain technology allows for its own system of trust, electronic transactions make it easier to copy and alter digital information in order to double spend money, which has been referred to as the “double-spending” problem.⁴⁹ Because of this, electronic transactions require extraordinary attentiveness, perhaps even more so than traditional systems.⁵⁰

C. *Methods for Which Cryptocurrencies Are Used Today*

In addition to its use as virtual currency, cryptocurrency is used in a variety of other ways.⁵¹ For instance, Climate Trade, a fintech company in the environmental sector, designed a carbon-neutral cryptocurrency called “Climatecoin.”⁵² Climatecoin, an Ethereum-based cryptocurrency, aims to become the world’s first blockchain-based platform for carbon credits trading.⁵³ Carbon credits are “a tradable permit or certificate that provides the holder of the credit the right to emit one ton of carbon dioxide or an equivalent of another greenhouse gas.”⁵⁴ The cryptocurrency would allow peer-to-peer exchange of carbon

46. *Id.*

47. *Id.*

48. See Bratspies, *supra* note 20, at 12 (explaining that once a cryptocurrency transaction is encrypted and recorded in the blockchain, the ledger can be viewed by anyone).

49. U.N. DEP’T OF ECON. & SOC. AFFAIRS, *supra* note 4.

50. *Id.*

51. See Peter Hulm, *Forget the Profits. See How UN Blockchains Can Save the World*, GLOBAL GENEVA (Sept. 29, 2018), <https://www.global-geneva.com/forget-the-profits-see-how-un-blockchains-can-save-the-world/> [<https://perma.cc/ZE6U-D8R7>] (explaining how blockchains can eliminate the need for paper proofs of identity, property, and actions, help deliver aid more securely, and distribute food entitlements).

52. CLIMATE TRADE, <https://climatetrade.com/> [<https://perma.cc/86DR-RK2P>] (last visited Feb. 9, 2020).

53. Brad Jones, *Climatecoin Aims to Be the World’s First Carbon-Neutral Cryptocurrency*, FUTURISM (Jan. 22, 2018), <https://futurism.com/climatecoin-aims-worlds-first-carbon-neutral-cryptocurrency> [<https://perma.cc/96ZG-RU6M>].

54. *Carbon Credit*, CFI, <https://corporatefinanceinstitute.com/resources/knowledge/other/carbon-credit/> [<https://perma.cc/68T3-RJDL>] (last visited Feb. 9, 2020).

credits.⁵⁵ Devices could also calculate their own carbon emissions and purchase carbon credits to offset the emissions.⁵⁶

There are also proposals for blockchain technology to be used as a distributed ledger of real-world information on personal identity, property registration, and attribution of food and medicine.⁵⁷ The United Nations and the World Identity Network⁵⁸ are searching for ways to register the identities of children on a blockchain as a means of combating child trafficking.⁵⁹ People are also finding commercial uses for the technology, such as sports betting.⁶⁰

III. FACEBOOK'S LIBRA

A. *How Libra Works*

Libra is made up of three parts: (1) the blockchain; (2) a reserve of assets; and (3) the Libra Association.⁶¹ The overarching goal of Libra is to create a more inclusive financial system.⁶² The Libra currency and the technologies that will use it are built on a blockchain platform, the "Libra Blockchain."⁶³ Unlike traditional blockchains, the Libra Blockchain will begin as a "permissioned blockchain."⁶⁴ A permissioned blockchain is a closed system⁶⁵ with an entity that controls access to the network and oversees who can operate a "node."⁶⁶ The Libra Association

55. Jones, *supra* note 53 (explaining how entities with excess carbon credits can trade with other entities on the market).

56. *Id.*

57. See Hulm, *supra* note 51 ("But the real promise of blockchain systems (as they are known) is in helping people live without paper proofs of their identities, property and actions. The UN is already working with blockchains to help refugees and the system is cutting maintenance costs.").

58. The World Identity Network is an organization seeking to help those without a proof of identification and leverage the potential of blockchain technology to help prevent human trafficking. WIN, <https://win.systems/> [<https://perma.cc/347Y-5YMM>] (last visited Feb. 9, 2020).

59. Hulm, *supra* note 51.

60. IKUYA TAKASHIMA, ETHEREUM: THE ULTIMATE GUIDE TO THE WORLD OF ETHEREUM 9 (2017).

61. LIBRA WHITE PAPER, *supra* note 6, at 3.

62. *Id.* at 4.

63. *Id.* at 5.

64. *Id.* at 4.

65. Access must be granted to run a validator node in a closed system. *Id.*

66. A node is a server that operates the blockchain. LIBRA LEXICON, *supra* note 39. A decentralized network is formed by several nodes. *Id.*

will serve as the centralized intermediary to manage and control Libra.⁶⁷ However, the goal of the Libra network is to eventually become “permissionless.”⁶⁸ On a “permissionless” blockchain, any participant who meets specific technical requirements can access the network or operate a node.⁶⁹ This transition will depend on the invention of a solution the Libra Association believes will provide the stability and security needed to support billions of people and transactions across the world through a permissionless network; however, the solution is unclear.⁷⁰ The Libra Association intends to implement this transition within five years of the target launch of Libra in 2020.⁷¹

Unlike the majority of cryptocurrencies, Libra will be fully backed by a reserve of “real assets” held in the Libra Reserve.⁷² The Libra Reserve is designed to give Libra intrinsic value because the assets will consist of bank deposits and short-term government securities in major currencies, such as the U.S. dollar and euro.⁷³ Using such currencies will ensure that users can trust the Libra’s stability and that they can exchange Libra for other currencies when needed.⁷⁴ In order to access Libra, a user will have to pay an equivalent amount of domestic currency.⁷⁵ Libra will not be based on supply and demand like Bitcoin and other cryptocurrencies.⁷⁶ Bitcoin’s supply is “very tightly

67. See LIBRA WHITE PAPER, *supra* note 6, at 8 (“The association is designed to facilitate the operation of the Libra Blockchain; to coordinate the agreement among its stakeholders — the network’s validator nodes — in their pursuit to promote, develop, and expand the network, and to manage the reserve.”).

68. *Id.* at 4.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 7 (“A basket of currencies and assets will be held in the Libra Reserve for every Libra that is created, building trust in its intrinsic value. The Libra Reserve is designed to preserve the value of the Libra currency over time.”).

73. *Id.*

74. *Id.*

75. See *id.* (analogizing the Libra Reserve to exchanging currencies while traveling).

76. See *id.* (explaining that Libra is intended to be a “stable digital cryptocurrency” backed by a reserve of assets so that any consumer with Libra is assured they can convert their Libra into local fiat currency based on an exchange rate); see also Rahul Menon, *How 18th Century Ideas of Money Supply Can Help Identify Problems with Libra*, WIRE (Aug. 18, 2019), <https://thewire.in/tech/money-supply-libra-cryptocurrency-problem> [https://perma.cc/VVK7-GKLZ] (“For other cryptocurrencies like Bitcoin, there is nothing backing each unit’s value, which is free to be determined by demand and supply. Supply, moreover, gets increasingly limited as the amount of Bitcoin in circulation increases, as it becomes harder and harder to mine additional units of Bitcoin.”).

constrained,” causing its value to fluctuate frequently.⁷⁷ The White Paper ensures that Libra will provide more stability.⁷⁸ Originally, assets in the reserve were to come from the Libra users, as well as investors in the separate Investment Tokens.⁷⁹ The Libra Association would pay incentives in Libra coin to Founding Members⁸⁰ to encourage widespread adoption.⁸¹ However, at a hearing before the House Financial Services Committee in October of 2019, Facebook CEO, Mark Zuckerberg, confirmed the Libra Association has either “abandoned or modified” its plan to offer dividends to early investors based on interest from the Libra Reserve.⁸²

For new Libra coins to be created, a purchase of Libra for fiat currency and transfer of that fiat currency to the reserve has to occur.⁸³ The Libra Association will manage the reserve and increase or decrease the amount of Libra in circulation based on market demand.⁸⁴ In turn, “the reserve will grow as users’ demand for Libra increases.”⁸⁵ Thus,

77. Dirk Andreas Zetzsche et al., *Regulating LIBRA: The Transformative Potential of Facebook’s Cryptocurrency and Possible Regulatory Responses* 3 (European Banking Inst. Working Paper Series 2019/44; Univ. of New South Wales Law Research Series UNSWLRS 19-47; Univ. of H.K. Faculty of Law Research Paper No. 2019/042) (July 11, 2019).

78. LIBRA WHITE PAPER, *supra* note 6, at 3 (“[P]eople need to have confidence that they can use Libra and that its value will remain relatively stable over time.”).

79. Originally, after paying a \$10 million minimum to join, Libra Association members would receive Libra Investment Tokens. Josh Constine, *Facebook Announces Libra Cryptocurrency: All You Need to Know*, TECHCRUNCH (June 18, 2019, 5:01 AM), <https://techcrunch.com/2019/06/18/facebook-libra/> [https://perma.cc/8XAH-XX5J] [hereinafter Constine, *Facebook Announces Libra*]; see LIBRA WHITE PAPER, *supra* note 6, at 7 (“Interest on the reserve assets will be used to cover the costs of the system, ensure low transaction fees, and support further growth and adoption. The rules for allocating interest on the reserve will be set in advance and will be overseen by the Libra Association.”). Each member’s share of the total tokens would be in proportion to the dividend they would earn from interest on the assets in the reserve. Constine, *Facebook Announces Libra, supra*. Once the Libra Association paid for “operating expenses, investments in the ecosystem, engineering research, and grants to nonprofits and other organizations,” dividends would be issued to members. *Id.* This system had the potential to earn significant interest for members, making it a big draw for companies to join. *Id.* (“If Libra becomes popular and many people carry a large balance of the currency, the reserve will grow huge and earn significant interest.”).

80. The Founding Members of the Libra Association consist of a group of geographically distributed and diverse organizations who serve as the validator nodes operating the Libra Blockchain. LIBRA WHITE PAPER, *supra* note 6, at 8.

81. *Id.*

82. Josh Constine, *Lowlights from Zuckerberg’s Libra Testimony in Congress*, TECHCRUNCH (Oct. 23, 2019, 11:03 AM), <https://techcrunch.com/2019/10/23/zuckerberg-testimony/> [https://perma.cc/C3X3-PCFG] [hereinafter Constine, *Lowlights*].

83. *Id.*

84. See *id.* (“The Libra Association also serves as the entity through which the Libra Reserve is managed, and hence the stability and growth of the Libra economy are achieved.”).

85. Christian Catalani et al., *THE LIBRA RESERVE* 3 (2019), https://libra.org/en-US/about-currency-reserve/#the_reserve [https://perma.cc/GM9W-RCSV].

according to the Libra Association, neither the underlying technology, mathematics, nor even the market will threaten the value of Libra.⁸⁶

Arguably, the existence of a fund of assets backing the currency does not automatically ensure the stability of its value.⁸⁷ There have been no details released regarding whether an explicit commitment of the assets will be announced.⁸⁸ Moreover, all fiat currencies are currently backed by a value of assets held by the country's central bank, but this does not ensure stability.⁸⁹ Inflation and influx of capital could change Libra's value in relation to other currencies.⁹⁰ On its face, Libra resembles more of a flexible exchange rate currency due to the absence of a fixed rate and coherent system to maintain it.⁹¹ Furthermore, so long as the Libra Association controls the quantity of Libra in circulation, Libra fails to adhere to cryptocurrencies' most appealing characteristic—decentralization.⁹² Rather than a centralized bank having control, Libra will be controlled by a governing entity comprised of powerful businesses and institutions.⁹³ One of those powerful businesses, Facebook, has been highly scrutinized over the misuse of consumer data, and similar subsequent problems in that area could threaten Libra's stability.⁹⁴

86. See, e.g., LIBRA WHITE PAPER, *supra* note 6, at 7–9 (explaining how Libra's reserve of real assets will increase its intrinsic value).

87. See Menon, *supra* note 76 (“Every national currency is backed by an equivalent value of assets held by the country's Central bank, yet this does not imply that its value remains stable. Inflation can change its value relative to domestically produced goods, and inflows and outflows of capital can drastically change its value relative to other currencies.”).

88. See Catalani, *supra* note 85, at 1 (stating that the money for the Libra reserve will come from commitments by members and users of Libra).

89. Menon, *supra* note 76.

90. *Id.*

91. Antonio Fatas, *Libra: Not a Currency Board and (Maybe) Not a Stable Currency*, SEEKING ALPHA (June 20, 2019, 7:54 AM), <https://seekingalpha.com/article/4271219-libra-currency-board-maybe-stable-currency> [<https://perma.cc/4QCA-TDW3>] (maintaining that Libra's stability will depend on its credibility).

92. See Zetzsche et al., *supra* note 77 (“Unlike decentralized cryptocurrencies, in particular Bitcoin, Libra has a consortium underpinning its distribution and ensuring compliance with Libra's mission as detailed in the White Paper, making it a permissioned system and hence different from that envisioned by cryptocurrency purists.”).

93. LIBRA WHITE PAPER, *supra* note 6, at 8.

94. See Munsif Vengattil, *Facebook Suspends Tens of Thousands of Apps in Response to Cambridge Analytica Row*, REUTERS (Sept. 20, 2019, 1:54 PM), <https://www.reuters.com/article/us-facebook-privacy/facebook-suspends-tens-of-thousands-of-apps-in-response-to-cambridge-analytica-row-idUSKBN1W5258> [<https://perma.cc/K563-C4QH>] (providing an example of why Facebook has been scrutinized).

Libra will be governed by the independent Libra Association which is in charge of evolving the ecosystem.⁹⁵ The Libra Association is an independent, not-for-profit membership organization headquartered in Geneva, Switzerland.⁹⁶ The Libra Association created Calibra, a regulated⁹⁷ subsidiary tasked with building Libra, to guarantee separation between social and financial data so Libra payments will not be connected to user's Facebook data.⁹⁸ Calibra will build and operate services on Facebook's behalf through the Libra network.⁹⁹

Although the Libra Association claims to be independent from Facebook, a decision made presumably in anticipation of backlash from the company's involvement, Facebook is still one of the founding members.¹⁰⁰ The Libra White Paper discloses that Facebook teams played a "key role" in establishing the Libra Association and the Libra Blockchain.¹⁰¹ Ultimately, the Libra Association has the final say, but Facebook maintained a "leadership role" through 2019.¹⁰² Members of the Libra Association will consist of businesses, nonprofit and multilateral organizations, and academic institutions.¹⁰³ The members that would work on finalizing the Libra Association's charter and become Founding Members upon its completion originally included:

- Payments: Mastercard, Mercado Pago, PayPal, PayU (Naspers' fintech arm), Stripe, Visa¹⁰⁴
- Technology and marketplaces: Booking Holdings, eBay, Facebook/Calibra, Farfetch, Lyft, Spotify AB, Uber Technologies, Inc.¹⁰⁵
- Telecommunications: Iliad, Vodafone Group¹⁰⁶

95. The ecosystem includes the entities that participate in the Libra economy including wallets, exchanges, validators, developers, and users. LIBRA LEXICON, *supra* note 39.

96. LIBRA WHITE PAPER, *supra* note 6, at 8.

97. *See* Barber, *supra* note 13 ("The idea is that Calibra will go to each country where it wants to launch its wallet and get itself in line with local laws for businesses that handle money for consumers. In the US, agencies will have to contend with how the company plans to protect user data, deal with money laundering, and handle sanctions, among other things.").

98. LIBRA WHITE PAPER, *supra* note 6, at 4.

99. *Id.*

100. The Founding Members of the Libra Association consist of a group of geographically distributed and diverse organizations who serve as the validator nodes operating the Libra Blockchain. *Id.* at 8.

101. *Id.* at 4.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

- Blockchain: Anchorage, Bison Trails, Coinbase, Inc., Xapo Holdings Limited¹⁰⁷
- Venture Capital: Andreessen Horowitz, Breakthrough Initiatives, Ribbit Capital, Thrive Capital, Union Square Ventures¹⁰⁸
- Nonprofit and multilateral organizations, and academic institutions: Creative Destruction Lab, Kiva, Mercy Corps, Women’s World Banking¹⁰⁹

The inclusion of major companies such as Visa, Uber, and PayPal signified a huge advantage for Libra at the outset.¹¹⁰

B. *Present Concerns for Libra*

The support from some of the largest payments systems in the world for this particular cryptocurrency would have potentially alleviated some of the privacy concerns.¹¹¹ However, after increased regulatory scrutiny, the biggest financial companies that Facebook recruited—PayPal, Visa, Mastercard, Stripe, and eBay—have disassociated themselves from the project.¹¹² Initial reports of withdrawals surfaced in August of 2019.¹¹³ Some partners expressed concern that supporting Libra might suggest to their own regulators a form of noncompliance with their regulations.¹¹⁴ According to Alfred F. Kelly, Visa Chairman and

107. *Id.*

108. *Id.*

109. *Id.*

110. AnnaMaria Andriotis & Peter Rudegeair, *Mastercard, Visa, eBay Drop Out of Facebook’s Libra Payments Network*, WALL ST. J. (Oct. 11, 2019, 6:44 PM), https://www.wsj.com/articles/mastercard-drops-out-of-facebook-s-libra-payments-network-11570824139?mod=hp_listc_pos2 [<https://perma.cc/QDA4-3SD6>] (explaining Libra’s original strategy that merchants such as Uber would accept Libra as a form of payment from customers while Visa and PayPal would allow consumers to convert their national currencies using Libra).

111. *See, e.g.*, Constine, *Facebook Announces Libra*, *supra* note 79 (emphasizing that Facebook is launching a subsidiary company, Calibra, that handles its crypto dealings and protects users’ privacy by separating Libra payments from Facebook data to prevent the payments from being used for ad targeting); LIBRA WHITE PAPER, *supra* note 6, at 4 (“Facebook created Calibra, a regulated subsidiary, to ensure separation between social and financial data and to build and operate services on its behalf on top of the Libra network.”).

112. Andriotis & Rudegeair, *supra* note 110.

113. Yogita Khatri, *At Least 3 Members Considering Cutting Ties with Facebook’s Libra Project*, BLOCK (Aug. 23, 2019, 5:35 AM), <https://www.theblockcrypto.com/linked/37430/at-least-3-members-considering-cutting-ties-with-facebooks-libra-project-report> [<https://perma.cc/87SU-8BN7>].

114. *Id.*

CEO, no company had officially joined the Libra Association yet.¹¹⁵ PayPal was the first company to officially drop out of the Libra Association in early October of 2019, followed by Visa, Mastercard, Stripe, and eBay just one week later.¹¹⁶ Their announcement came days before Libra's partners were set to "formally sign on to the project" in Switzerland.¹¹⁷

The loss of four of the largest payments companies in the world leaves Libra without one of its biggest draws—the technical resources to get users' money into the system.¹¹⁸ As a result, Libra's support system primarily consists of smaller payments companies, telecommunications providers, venture capital firms, e-commerce merchants, and nonprofits.¹¹⁹ Some of the companies, such as Visa and Mastercard, left open the possibility of rejoining the network, so long as the Libra Association fully satisfies all requisite regulatory expectations.¹²⁰

The loss of Visa and Mastercard was a considerable setback for Libra.¹²¹ The credit and debit cards that operate over their networks would have made it easier for consumers to purchase the digital coins.¹²² Even if the companies are simply playing it safe and will ultimately rejoin the Association in the future, the companies' decision to back out solidifies the privacy and regulatory concerns about Libra.¹²³

115. *Id.*

116. Andriotis & Rudegeair, *supra* note 110.

117. *Id.*; see Nikhilesh De, *Vodafone Is the Latest Big Company to Quit Facebook-Founded Libra Association*, COINDESK (Jan. 21, 2020, 20:00 UTC), <https://www.coindesk.com/vodafone-is-the-latest-big-company-to-quit-facebook-founded-libra-association> [<https://perma.cc/FTB9-2RCG>] (reporting that Vodafone became the eighth company to leave the Libra Association, and the first to leave after the association was formally organized in October of 2019).

118. Andriotis & Rudegeair, *supra* note 110.

119. *Id.*

120. *Id.*

121. *See id.* (explaining the potential of Visa and Mastercard to make it easier for consumers to buy Libra).

122. *Id.*; AnnaMaria Andriotis et al., *Inside Facebook's Botched Attempt to Start a New Cryptocurrency*, WALL ST. J. (Oct. 16, 2019, 12:19 PM), <https://www.wsj.com/articles/facebook-wanted-to-create-a-new-currency-it-wasnt-ready-for-the-backlash-11571242795?mod=searchresults&page=1&pos=13> [<https://perma.cc/RE7K-P7ZG>] (explaining that the companies can still choose to enable consumers and merchants to use the new coin without being official members).

123. *See* Andriotis & Rudegeair, *supra* note 110 (stating that the regulatory backlash "stunned" the project backers and the backers believed the Libra Association overstated their involvement in the matter in its announcement of Libra as they had only signed nonbinding letters of intent to join the association which gave them the option to withdraw at any time).

C. *Libra Versus Other Cryptocurrencies*

The creators of Libra were very intentional in creating a cryptocurrency that is distinctly different from others currently in the market.¹²⁴ The Libra White Paper pointed to what it considers to be the most important distinction between it and existing cryptocurrencies: the underlying assets.¹²⁵ Facebook believes that other cryptocurrencies' instability is caused by their lack of intrinsic value which leads to fluctuating prices largely based on expectations.¹²⁶ To counteract such instability, the Libra Association will be the sole issuer of Libra.¹²⁷ The ability to "mint" (i.e. create) new Libra, or "burn" (destroy) existing coins, rests with the Association.¹²⁸ Therefore, the Association acts as "buyer of last resort" and as "issuer of last resort."¹²⁹ Every time a user "cashes in" their respective currency, that money is deposited into the Libra Reserve in exchange for the equivalent value of a Libra token.¹³⁰ If someone were to "cash out" from the Libra Association, the returned Libra token would be destroyed and that person would receive the equivalent value in their local currency, thereby ensuring that there is always 100% of the value of the Libra in circulation.¹³¹

The assets also distinguish Libra as money, not just a currency.¹³² Specifically, Libra is a stablecoin.¹³³ However, unlike "pegged" stablecoins, which are tied to a single currency, such as the U.S. dollar, Libra maintains its own value.¹³⁴ Because of its extreme price volatility, Bitcoin can only serve as a medium of exchange in instantaneous

124. LIBRA WHITE PAPER, *supra* note 6, at 2.

125. *Id.* at 7.

126. *Id.* ("The assets behind Libra are the major difference between it and many existing cryptocurrencies that lack such intrinsic value and hence have prices that fluctuate significantly based on expectations.").

127. *Id.* (claiming that by serving as the manager of the Libra Reserve, "the stability and growth of the Libra economy are achieved").

128. *Id.* at 8.

129. *Id.*

130. Constine, *Facebook Announces Libra*, *supra* note 79.

131. *Id.*

132. Zetzsche et al., *supra* note 77, at 4.

133. "Stablecoins" are a cryptocurrency whose value is tied to a fiat currency. Libra will be a stablecoin because its value will be tied to a basket of major government-issued currencies. For each Libra given, an equal value of either a currency or a government bond, will be placed on deposit with a reliable repository. Buckley et al., *supra* note 14.

134. Constine, *Facebook Announces Libra*, *supra* note 79.

transactions.¹³⁵ Thus, it is only a currency.¹³⁶ Libra's value, however, is tied to national currencies and other assets.¹³⁷ Accordingly, Libra's value depends on the inflation and effects of the underlying currencies and on governmental control.¹³⁸ Other cryptocurrencies' value, such as Bitcoin, are separate from any one national currency.¹³⁹

Regardless, Libra should not be compared to traditional online payments systems such as PayPal and Apple Pay.¹⁴⁰ Those online payments systems assist transactions denominated in a national currency, while cryptocurrencies are separate from any national currency.¹⁴¹ Neither PayPal nor Apple Pay functions as a separate system for counting value.¹⁴² Instead, each utilizes transactions in national currencies applying to credit card transactions, either in person or online.¹⁴³

Finally, Libra hopes to be long-lasting by focusing on decentralization.¹⁴⁴ In order to be a founding member of the Libra Association, one must have a financial stake in the network.¹⁴⁵ Each member will only get up to one vote, or 1% of the total vote (whichever is larger) in the Libra Association.¹⁴⁶ This system provides a layer of decentralization that protects against Facebook or any other participant from seizing Libra for its own gain.¹⁴⁷

135. Zetzsche et al., *supra* note 77, at 4.

136. *Id.*

137. LIBRA WHITE PAPER, *supra* note 6, at 7.

138. See Catalani, *supra* note 85, at 2 (describing how the assets backing each Libra coin will ensure stability since "the association will only invest in debt from stable governments with low default probability that are unlikely to experience high inflation").

139. See Zetzsche et al., *supra* note 77 ("Bitcoin is a truly decentralized currency with no central administering organization.").

140. Georgios I. Zekos, *Economics and Legal Understanding of Virtual Currencies*, 38 No. 8 BANKING & FIN. SERVS. POL'Y REP. 1, 6 (2019).

141. *Id.* at 5–6.

142. *Id.* at 6.

143. *Id.*

144. See LIBRA WHITE PAPER, *supra* note 6, at 9 ("[D]ecentralization ensures that there are low barriers to entry for both building on and using the network and improves the Libra ecosystem's resilience over the long term.").

145. THE LIBRA ASSOCIATION 4 (2019) [hereinafter THE LIBRA ASSOCIATION], <https://libra.org/en-US/association-council-principles/#overview> [<https://perma.cc/NL4Y-V6ZJ>] (requiring an entity to commit at least \$10 million to the project).

146. *Id.*

147. Constine, *Facebook Announces Libra*, *supra* note 79.

IV. LEGISLATIVE AND REGULATORY RESPONSE TO LIBRA

A. *Regulations and Judicial Interpretations*

The United States has always been a world leader in technological innovation, but recent advances in financial technology have posed a difficult challenge to regulators.¹⁴⁸ Although financial regulators have acknowledged the need for refined cryptocurrency and blockchain regulation, their uncertainty as to the correct approach has left the industry with unclear guidelines on legal and regulatory expectations.¹⁴⁹

Regulatory frameworks for cryptocurrencies vary worldwide.¹⁵⁰ The regulations range from outright bans to clear and favorable legislation.¹⁵¹ As of 2019, China has not yet passed any legislation regulating cryptocurrencies as legal tender,¹⁵² Switzerland has “relatively lenient policies,” while Japan and the U.K. are somewhere in between.¹⁵³ The United States does not prohibit the use of cryptocurrencies but is actively working to develop legislation which would control and regulate the industry within its borders.¹⁵⁴

In the meantime, the United States has been forced to haphazardly apply existing laws and regulations to cryptocurrency, and in some areas, it remains unclear what the best approach will be going forward.¹⁵⁵ For example, the Uniform Commercial Code (“UCC”) does not currently

148. Todd Beauchamp et al., *Regulating the Future*, INT’L FIN. L. REV., Aug.–Sept. 2019, at 52–53 (addressing the challenges posed when a traditional regulatory system attempts to adapt to technological advances and why the U.S. has not “kept pace” with these changes).

149. *See id.* at 53 (“Compound regulatory uncertainty with enforcement activity that has not abated, and the threat to American innovation becomes apparent.”).

150. Matthew Blumenfeld, Michael Horn, Keaghan Ames, Nikhil Raina, Cesar Munoz & Margaret Paulsen, *Carving Up Crypto: Regulators Begin to Find Their Footing*, PWC 1 (2018), <https://www.pwc.com/us/en/financial-services/regulatory-services/publications/assets/cryptocurrency.pdf> [<https://perma.cc/JQ7W-BP33>].

151. *Id.* at 1–3.

152. Lancy Zhang, *Regulation of Cryptocurrency: China*, LIBRARY OF CONG. (June 2018), <https://www.loc.gov/law/help/cryptocurrency/china.php> [<https://perma.cc/TD2J-NRHY>].

153. Blumenfeld, *supra* note 150, at 1.

154. Beauchamp et al., *supra* note 148 (arguing that lawmakers have “reacted aggressively” to financial technology developments that pose a threat to privacy, cybersecurity, and trade risks while simultaneously being careful not to suppress “innovation and expansion”).

155. *See, e.g.*, Jeanne L. Schroeder, *Bitcoin and the Uniform Commercial Code*, 24 U. MIAMI BUS. L. REV., no. 3, at 1, 9–21 (2016) (discussing application of the UCC to cryptocurrency and noting concerns that may arise absent UCC provisions specifically tailored for cryptocurrency).

address cryptocurrency, so state courts have had to find where cryptocurrency most closely fits.¹⁵⁶ Under Article 9 of the UCC, cryptocurrency has been grouped with a broadly-defined type of personal property categorized as “general intangible[s]”¹⁵⁷—but not “money.”¹⁵⁸ This categorization has led to a number of concerns about the potential harm that could result from grouping digital currencies with the traditional asset categories under the existing UCC rules without first carving out special provisions tailored for cryptocurrency.¹⁵⁹

At the federal level, current regulators in the United States include the Commodity Futures Trading Commission (“CFTC”),¹⁶⁰ Securities and Exchange Commission (“SEC”),¹⁶¹ Internal Revenue Service (“IRS”),¹⁶² and the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”).¹⁶³ As an economic leader, the United States needs to think outside the traditional regulatory framework in order to increase innovation rather than hinder its progress.¹⁶⁴ By

156. *See, e.g., id.* (discussing application of the UCC to cryptocurrency and noting concerns that may arise absent UCC provisions specifically tailored for cryptocurrency).

157. U.C.C. § 9-102(a)(42) (2018).

158. U.C.C. § 1-201(b)(24) (2018) (“‘Money’ means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.”).

159. *See, e.g.,* Schroeder, *supra* note 155 (discussing application of the UCC to cryptocurrency and noting concerns that may arise absent UCC provisions specifically tailored for cryptocurrency).

160. COMMODITY FUTURES TRADING COMM’N, AN INTRODUCTION TO VIRTUAL CURRENCY, https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/document/s/file/oceo_aive0218.pdf [<https://perma.cc/B4QQ-G5WH>] (last visited Feb. 9, 2020).

161. SEC. & EXCH. COMM’N, FRAMEWORK FOR “INVESTMENT CONTRACT” ANALYSIS OF DIGITAL ASSETS, https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets#_edn1%5B [<https://perma.cc/4PQ5-5DHK>] (last updated Apr. 3, 2019).

162. Press Release, Internal Revenue Service, IRS Reminds Taxpayers to Report Virtual Currency Transactions (Mar. 23, 2018), <https://www.irs.gov/newsroom/irs-reminds-taxpayers-to-report-virtual-currency-transactions> [<https://perma.cc/Z7Y2-3T98>].

163. DEP’T OF THE TREASURY FIN. CRIMES ENFORCEMENT NETWORK, FIN-2013-G001, APPLICATION OF FINCEN’S REGULATIONS TO PERSONS ADMINISTERING, EXCHANGING, OR USING VIRTUAL CURRENCIES (Mar. 18, 2013), <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf> [<https://perma.cc/L6NS-CQEA>].

164. The United States should follow its own precedent in “adopting and amending legal frameworks.” This would ensure the United States is not left behind in the cryptocurrency market and thus “miss[] an opportunity to cultivate innovation, create jobs and grow the economy by leveraging the emerging technology.” Max Yakubowski, *Why Is the US Not Yet a Leader in Crypto Regulation? Experts Answer*, COINTELEGRAPH (Aug. 4, 2019) (quoting Julie Stitzel, Vice President, U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness), <https://cointelegraph.com/news/why-is-the-us-not-yet-a-leader-in-crypto-regulation-experts-answer> [<https://perma.cc/CUD4-C2DN>].

classifying digital assets, products, and services and determining the proper federal entity with the jurisdiction to regulate and oversee them, the United States would maximize its potential for economic growth through virtual currencies.¹⁶⁵

The SEC has taken a more active role in enforcing federal securities laws regarding cryptocurrencies by leading twenty enforcement actions in 2018.¹⁶⁶ The SEC, relying on the 1946 Supreme Court decision in *SEC v. W.J. Howey Co.*,¹⁶⁷ treats most tokens sold in initial coin offerings (“ICO”) as securities and monitors ICOs for fraud and other misconduct.¹⁶⁸ The SEC regulates the space via non-binding guidance, enforcement actions, and no-action letters.¹⁶⁹ On the other hand, FinCEN classifies individuals who use or exchange cryptocurrency as money transmitters subject to state licensing laws and anti-money laundering requirements.¹⁷⁰ In an interpretive guidance released in May of 2019, FinCEN clarified that the Bank Secrecy Act¹⁷¹ applies to cryptocurrencies as well.¹⁷²

The Financial Stability Oversight Council (“FSOC”) is the only federal agency with a mandate to monitor gaps in regulation that could cause risks to the financial system of the United States.¹⁷³ The Federal Reserve is currently the most proactive member of the FSOC when it comes to detecting threats to the stability of the financial system as a whole.¹⁷⁴ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”)¹⁷⁵ mandates the Federal Reserve to control

165. *See id.* (“Appropriately classifying digital assets and determining the federal entity with the jurisdiction to regulate and supervise them is one way to provide regulatory clarity for innovators and signal that the United States is a leader in the digital asset space.” (quoting Julie Stitzel, Vice President, U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness)).

166. Beauchamp et al., *supra* note 148, at 53.

167. *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946).

168. SEC. & EXCH. COMM’N, *supra* note 161.

169. Beauchamp et al., *supra* note 148, at 53.

170. DEP’T OF THE TREASURY FIN. CRIMES ENFORCEMENT NETWORK, *supra* note 163.

171. Bank Secrecy Act, 31 U.S.C. §§ 5311–5314 (2018).

172. DEP’T OF THE TREASURY FIN. CRIMES ENFORCEMENT NETWORK, *supra* note 163.

173. U.S. DEP’T OF THE TREASURY, FINANCIAL STABILITY OVERSIGHT COUNCIL, <https://www.treasury.gov/initiatives/fsoc/rulemaking/Pages/default.aspx> [<https://perma.cc/TGC9-M75M>] (last updated Mar. 6, 2019, 4:22 PM).

174. Zekos, *supra* note 140, at 9.

175. Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) § 805, 12 U.S.C. § 5464 (2018).

systemically important payment systems.¹⁷⁶ Thus, the Federal Reserve is the most likely to respond to any threats presented by virtual currencies and should play a pivotal role in regulatory discussions.¹⁷⁷

B. Lawmakers

Lawmakers in the United States have been wary of cryptocurrencies as they pose heightened privacy, cybersecurity, and trading risks.¹⁷⁸ Federal Reserve Chairman Jerome Powell told lawmakers that Facebook's Libra proposal would not take the next steps without addressing "concerns over privacy, money laundering, customer protection, and financial stability."¹⁷⁹ The concern is not whether virtual currencies should continue but whether they can be appropriately monitored in order to reduce risks.¹⁸⁰ If the SEC chooses to regulate Libra as a security, the cryptocurrency would be subject to numerous reporting rules and requirements for protecting investors.¹⁸¹ The effects of such SEC regulation could be crippling.¹⁸²

Once Facebook announced its plans to launch Libra, it took less than twenty-four hours for Washington to mobilize against it.¹⁸³ Maxine Waters, House Financial Services Committee Chairman, insisted Facebook halt its plans until she could examine it.¹⁸⁴ Republican Representative Patrick McHenry of North Carolina called for hearings.¹⁸⁵

176. Dodd-Frank § 802, 12 U.S.C. § 5461; *see* Dodd-Frank § 805, 12 U.S.C. § 5462(9) ("The terms 'systemically important' and 'systemic importance' mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.").

177. Zekos, *supra* note 140, at 10 (arguing that "the Federal Reserve is the best candidate to respond to any threats presented by virtual currencies").

178. Beauchamp et al., *supra* note 148, at 53.

179. Pete Schroeder & Ismail Shakil, *U.S. Proposes Barring Big Tech Companies from Offering Financial Services, Digital Currencies*, REUTERS (July 14, 2019, 6:03 PM), <https://www.reuters.com/article/us-usa-cryptocurrency-bill/us-proposes-barring-big-tech-companies-from-offering-financial-services-digital-currencies-idUSKCN1U90NL> [<https://perma.cc/SR5D-2HRD>].

180. *See* Zekos, *supra* note 140, at 10–11 (arguing that the law is limited in its capacity to regulate the risks posed by virtual currencies to the financial system).

181. *Id.*

182. *Id.*

183. Berry, *supra* note 11.

184. *Id.*

185. *Id.*

The Senate Banking Committee—a panel not known for speed¹⁸⁶—set to look into Libra in mid-July of 2019.¹⁸⁷ In contrast, Congress took three months to hold hearings after the 2017 Equifax data breach and two months to look into Wells Fargo’s 2016 accounts scandal.¹⁸⁸ It is unlikely that Congress would have acted with such haste had any other technology giant (such as Amazon, Google, or PayPal) announced a similar idea.¹⁸⁹ Though Congress would have certainly gotten involved eventually, their rapid response to Facebook’s plans signifies both the colossal impact Libra could have and the regulatory hurdles Facebook will have to overcome to make that impact a reality.¹⁹⁰

In an attempt to ease the minds of Libra critics, Facebook has been transparent in its intention to become subject to regulatory authorities.¹⁹¹ Calibra, a regulated subsidiary tasked with building Libra, has already registered with FinCEN and acknowledged that it will be subject to anti-money laundering obligations.¹⁹² Calibra may also need to obtain state money transmitter licenses.¹⁹³

Even with Facebook’s willingness to cooperate with regulators, Congress could still shut the operation down.¹⁹⁴ On July 15, 2019, the Democratic majority in the House Financial Services Committee

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*; see Sherrod Brown (@SenSherrodBrown), TWITTER (June 18, 2019, 10:44 AM), <https://twitter.com/sensherrodbrown/status/1141039013916303361?lang=en> [<https://perma.cc/NDL9-VVEL>] (“Facebook is already too big and too powerful, and it has used that power to exploit users’ data without protecting their privacy. We cannot allow Facebook to run a risky new cryptocurrency out of a Swiss bank account without oversight.”).

190. Berry, *supra* note 11.

191. See LIBRA WHITE PAPER, *supra* note 6, at 2 (“We believe that collaborating and innovating with the financial sector, including regulators and experts across a variety of industries, is the only way to ensure that a sustainable, secure and trusted framework underpins this new system.”).

192. DEP’T OF THE TREASURY FIN. CRIMES ENFORCEMENT NETWORK, MSB REGISTRANT SEARCH (2020), <https://www.fincen.gov/msb-registrant-search> [<https://perma.cc/47ZD-AEQ4>] (showing “entities that have registered as Money Services Businesses (MSBs) pursuant to the Bank Secrecy Act (BSA) regulations at 31 CFR 1022.380(a)–(f), administered by the Financial Crimes Enforcement Network (FinCEN)”).

193. Zetzsche et al., *supra* note 77, at 17 (“We would expect the Libra Association to apply for licenses as a payment services provider in the EU and as a money transmitter in the US. These providers offer receiving entities (such as merchants or public institutions) services for accepting digital payments including through bankbased and online payments. Many jurisdictions have similar schemes which could, and in all likelihood would, be applied.”).

194. Keep Big Tech Out Of Finance Act of 2019, 116th Cong. § 1 (2019) (“To prohibit large platform utilities from being a financial institution or being affiliated with a person that is a financial institution, and for other purposes.”).

introduced draft legislation entitled “Keep Big Tech Out Of Finance Act,”¹⁹⁵ targeting Libra.¹⁹⁶ The bill recommends prohibiting “large platform utilities” from operating as financial institutions or launching a cryptocurrency.¹⁹⁷ The bill defines a “large platform utility” as a company primarily offering an online platform service with a minimum annual revenue of \$25 billion.¹⁹⁸ A violation of these rules would result in a fine of \$1 million per day.¹⁹⁹ The bill is likely to face opposition from Republican members of the House who are supporters of innovation.²⁰⁰ Even so, the proposal signifies the staunch opposition Facebook faces in launching Libra.²⁰¹

Another proposed bill circulating in the House is the bipartisan “Token Taxonomy Act,”²⁰² which would have the opposite effect of the Keep Big Tech Out Of Finance Act.²⁰³ Rather than an outright ban on large technology companies creating cryptocurrencies or operating as financial institutions, this bill seeks to enhance the current regulatory framework by clarifying the regulatory posture of cryptocurrencies and the bodies that would provide oversight.²⁰⁴ The bill²⁰⁵ proposes an amendment to the Securities Act of 1933²⁰⁶ and the Securities Exchange Act of 1934²⁰⁷—the foundational statutes of the modern federal securities law framework—and would explain the Supreme Court’s 1946 decision in *SEC v. W.J. Howey Co.*,²⁰⁸ which sets forth the factors to be considered in the determination of whether an investment constitutes an “investment contract” under the 1933 Act’s definition of “security.”²⁰⁹ The

195. *Id.*

196. *Id.*

197. *Id.* (defining a “large platform utility” as a technology company).

198. *Id.*

199. *Id.*

200. Schroeder & Shakil, *supra* note 179.

201. *Id.*

202. Token Taxonomy Act of 2019, H.R. 7356, 115th Cong. § 2 (2019) (proposing to exclude cryptocurrencies from being classified as a security).

203. *Id.*

204. *Id.*

205. H.R. 7356, 115th Cong. (2017-2018).

206. 15 U.S.C. § 77(a) (2018).

207. *Id.* at § 78(e).

208. *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946) (creating a test for determining what qualifies as an “investment contract” subject to regulation by the SEC and pursuant to which the SEC has treated digital tokens as securities).

209. H.R. 7356, 115th Cong. (2017-2018) (amending the Securities Act of 1933 and the Securities Exchange Act of 1934 in order to exclude “digital tokens” from the definition of a security, which would have tax implications).

amendments would exclude digital currencies from being defined as securities.²¹⁰

While lawmakers have expressed a willingness to work towards regulation for financial innovation, they are less enthused about aiding in a technology giant's attempt to enter the digital currency market.²¹¹ Libra has drawn scrutiny from policymakers globally who have expressed concerns regarding data privacy, consumer protection, and money laundering.²¹² However, Libra's biggest hurdle may be Facebook's massive platform.²¹³ As Jerome Powell stated at his semi-annual testimony on monetary policy before the U.S. House Financial Services Committee, Facebook's massive platform is what sets it apart from other digital currency projects and requires regulatory review to be "patient and careful."²¹⁴ Facebook hopes to launch Libra in 2020, but lawmakers intend to assess the appropriate risks before that happens.²¹⁵

After Facebook CEO Mark Zuckerberg's hearing before the House Financial Services Committee in October of 2019, Libra looked less likely to launch in 2020.²¹⁶ Zuckerberg deflected the committee member's concerns by emphasizing China's likelihood to introduce their own version of Libra if Congress prevents the cryptocurrency from coming to fruition.²¹⁷ Zuckerberg did state, however, that he is open to the idea of regulators requiring Libra's basket of reserves to primarily consist of the U.S. dollar.²¹⁸ Further, Zuckerberg explained that because

210. *Id.*

211. Pete Schroeder & Trevor Hunnicutt, *Fed Chief Calls for Facebook to Halt Libra Project until Concerns Addressed*, REUTERS (July 10, 2019, 10:58 AM), <https://www.reuters.com/article/us-usa-fed-powell-libra/fed-chief-calls-for-facebook-to-halt-libra-project-until-concerns-addressed-idUSKCN1U51VE> [<https://perma.cc/QR2H-2FKX>] (addressing "growing regulatory hurdles" Libra faces due to concerns over money laundering, privacy, consumer protection, and financial stability).

212. *Id.*

213. *Id.*

214. *Monetary Policy and the State of the Economy: Hearing Before the Comm. on Fin. Servs.*, 116 Cong. (2019) (testimony of Jerome Powell, Chairman, Board of Governors of the Federal Reserve System).

215. Schroeder & Hunnicutt, *supra* note 211.

216. Constine, *Lowlights*, *supra* note 82.

217. *Id.* ("As soon as we put forward the white paper around the Libra project, China immediately announced a public private partnership, working with companies . . . to extend the work that they've already done with AliPay into a digital Renminbi as part of the Belt and Road Initiative that they have, and they're planning on launching that in the next few months.").

218. *Id.* (discussing how this answer was in response to a question asking what happens if the Libra Association decides to add the Chinese currency to Libra's basket of reserves, thereby reducing the U.S. dollar's fraction of the reserves).

Libra is intended to be a global payment system, Libra will not be backed 100% by the U.S. dollar since it would interfere with Libra's acceptance in foreign countries.²¹⁹ As critical questions remain unanswered, Libra's progress with regulators is at a standstill.²²⁰

V. THE UNBANKED POPULATION

A. *Who Are the Unbanked?*

One of Libra's primary goals is to reach the unbanked population.²²¹ Globally, about 1.7 billion adults remain unbanked—without an account at a financial institution or through a mobile money provider—including 14.1 million Americans.²²² In 2014, that number was 2 billion.²²³ The spread of digital financial services such as mobile banking has helped decrease the number of people who are unbanked.²²⁴ Financial services provide a means of escape from poverty by driving development and making it easier to manage financial emergencies.²²⁵ Unfortunately, many people do not have access to services that can serve these functions.²²⁶ Virtually all of the unbanked adults live in the developing world, with nearly half living in just seven developing countries: Bangladesh, China, India, Indonesia, Mexico, Nigeria, and

219. *Id.*

220. *See id.* (observing that Zuckerberg repeatedly emphasized the separation between Facebook and the Libra Association and the fact that Libra's policies are not definite in order to avoid providing substantial answers).

221. LIBRA WHITE PAPER, *supra* note 6, at 2.

222. DEMIRGÜÇ-KUNT ET AL., *supra* note 1 (providing key findings from the Global Findex database, namely the Global Financial Inclusion database, which surveys improvements in global access to basic financial services); FDIC, *FDIC National Survey of Unbanked and Underbanked Households*, DIVISION OF DEPOSITOR AND CONSUMER PROTECTION (Oct. 2018).

223. DEMIRGÜÇ-KUNT ET AL., *supra* note 1.

224. *Id.* at 1.

225. *Id.*

226. *Id.*

Pakistan.²²⁷ Four of these countries (China,²²⁸ Pakistan,²²⁹ Indonesia,²³⁰ and Bangladesh)²³¹ have either permanently or temporarily banned Facebook at some point.²³²

The pattern of economic disparities among the unbanked populations is not solely attributed to socioeconomic differences.²³³ Globally, half of unbanked adults come from the poorest 40% of households within their respective economies, whereas the other half come from the richest 60%.²³⁴ Such disparities can be attributed to a lack of education or unemployment.²³⁵ Slightly more than one-third of the unbanked have finished high school or post-secondary education.²³⁶

227. *Id.* at 4.

228. The main catalyst for the ban of Facebook in China was the July 2009 Urumqi riots in Xinjiang, a western Chinese province. The Chinese believed Xinjiang independent activists used Facebook as their primary means of communication. Facebook was banned shortly after the riots and has been banned ever since. Kristina Zucchi, *Why Facebook is Banned in China & How to Access it*, INVESTOPEDIA (Oct. 22, 2019), <https://www.investopedia.com/articles/investing/042915/why-facebook-banned-china.asp> [<https://perma.cc/RZG9-YTM3>].

229. Declan Walsh, *Pakistan Lifts Facebook Ban but 'Blasphemous' Pages Stay Hidden*, THE GUARDIAN (May 31, 2010, 11:55 AM), <https://www.theguardian.com/world/2010/may/31/pakistan-lifts-facebook-ban> [<https://perma.cc/ACP5-KCFG>] (analyzing how Pakistan banned Facebook for just two-weeks in 2010 in response to an online competition inviting people to submit drawings of the prophet Muhammad. Muslims consider all depictions of Muhammad profane).

230. Avelyn Ng, *Indonesia Government Lifts Temporary Ban on Social Media Features*, MARKETING (May 25, 2019), <https://www.marketing-interactive.com/indonesia-govt-lifts-temporary-ban-on-social-media-features/> [<https://perma.cc/52MZ-6846>] (discussing how the Indonesian government limited access to Facebook and WhatsApp in May of 2019 after deadly riots spread across Jakarta in anticipation of the country's presidential election results. Authorities believed this was necessary to prevent the spread of fake news that could be inciting the protests).

231. In 2015, Bangladesh temporarily blocked Facebook, among other social networks, after its Supreme Court upheld the death sentences of two men convicted of war crimes during the independence struggle with Pakistan in 1971. Authorities stated that the sites were blocked to maintain order after the rulings came down. *Bangladesh Death Sentences Lead to Facebook Ban*, BBC (Nov. 18, 2015), <https://www.bbc.com/news/world-asia-34860667> [<https://perma.cc/3DQB-PZEM>].

232. Elizabeth Loppatto, *Facebook's Libra Probably Won't Help People Without Bank Accounts*, VERGE (June 27, 2019, 9:00 AM), <https://www.theverge.com/2019/6/27/18760384/facebook-libra-currency-cryptocurrency-money-transfer-bank-problems-india-china> [<https://perma.cc/U59A-B6LL>].

233. DEMIRGÜÇ-KUNT ET AL., *supra* note 1 (“In [economies] where half or more of adults are unbanked, the unbanked are as likely to come from a poorer household as from a wealthier one. In economies where only about 20–30 percent of adults are unbanked, however, the unbanked are much more likely to be poor.”).

234. *Id.*

235. *Id.* at 5.

236. *Id.*

People active in the labor force are less likely to be unbanked.²³⁷ However, when unbanked adults were asked why they were without a financial account, most gave two reasons.²³⁸ The most common answer was having too little money to use an account.²³⁹ Cost and distance were given as a second reason by about a quarter of responders, with a similar amount citing the fact that a family member already had an account.²⁴⁰ Notably, distrust in the financial system was cited by one-fifth of adults without a financial institution account.²⁴¹ There is skepticism as to whether Facebook could overturn such distrust with Libra.²⁴²

B. Why Cryptocurrencies Can Reach the Unbanked

Cryptocurrencies in particular have unique qualities that address the common reasons—cost, distance, and distrust in the financial system—cited by unbanked adults for not having a financial account.²⁴³ Such qualities include: distributed governance, which ensures that the network is not controlled by a single entity; open access that opens participation to anyone with an internet connection; and security through cryptography, which protects the integrity of the funds.²⁴⁴ Yet, blockchain technologies have not reached mainstream adoption, as Libra hopes to achieve.²⁴⁵ Libra's White Paper offers insight into why that may be, pointing to volatility and lack of scalability.²⁴⁶ Other projects have attempted to bypass regulation entirely and disrupt the existing system.²⁴⁷ By working with the financial sector and including experts in various industries and regulators, Facebook thinks Libra can be the system to achieve mainstream adoption.²⁴⁸

As the Global Findex Report stated, distance and lack of funds were two of the most common reasons given by adults who remain

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. Berry, *supra* note 11.

243. LIBRA WHITE PAPER, *supra* note 6, at 1.

244. *Id.*

245. *Id.* at 2.

246. *Id.*

247. *Id.*

248. *Id.*

unbanked.²⁴⁹ Libra could potentially overcome those obstacles by providing a more affordable and accessible currency.²⁵⁰ With mobile phones, there is no longer a need to travel long distances, and Libra's lower costs would increase affordability and make small sum transactions cost-effective.²⁵¹

One of the biggest areas where Libra could contribute is remittances—money sent to or received from relatives or friends.²⁵² Because remittances are subject to transaction fees, the average cost of remittances is 7% of the amount transferred.²⁵³ Some of the most expensive rates are from the United States to Africa, which is where much of the unbanked population lives, with remittance transaction fees ranging from 5% to 10%.²⁵⁴ Libra is expected to reduce these fees to at least 1%.²⁵⁵

Libra would enable consumers to send smaller amounts overseas at a lower cost.²⁵⁶ The costs of remittances originated when sending money around the world was very expensive for financial institutions; today, they are merely for profit.²⁵⁷ Because the use of Libra will not

249. DEMIRGÜÇ-KUNT ET AL., *supra* note 1, at 5.

250. LIBRA WHITE PAPER, *supra* note 6, at 2.

251. DEMIRGÜÇ-KUNT ET AL., *supra* note 1, at 11.

252. *Id.* at 6; *see, e.g.*, Press Release, The World Bank, Record High Remittances Sent Globally in 2018 (Apr. 8, 2019), <https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018> [<https://perma.cc/B3UX-ML5A>] (reporting that remittances to low- and middle-income countries reached a record high of \$529 billion in 2018, with total remittances climbing to \$689 billion).

253. Buckley et al., *supra* note 14; Zetzsche et al., *supra* note 77, at 12 (explaining that a Pacific Islander in Australia may have to spend between \$25 and \$50 to send home \$500, but with Libra that transfer would only cost cents).

254. Zetzsche et al., *supra* note 77, at 12.

255. Michael Pisa, *Facebook's Big Bet on Digital Currency: What Libra Could Mean for Global Payments and Remittances*, CTR. FOR GLOBAL DEV. (June 25, 2019), <https://www.cgdev.org/blog/facebooks-big-bet-digital-currency-what-libra-could-mean-global-payments-and-remittances> [<https://perma.cc/Z9JU-CEV6>] (“Consider a worker in the UAE who wants to send remittances back to her family in South Sudan: According to World Bank data, today that worker needs to spend roughly \$7.50 for every \$100 she remits back home. If she sent \$100 every month using a free peer-to-peer transaction platform like Libra, the \$90 she could save annually would equate to 37 percent of the average GDP per capita in South Sudan (which was \$237 in 2016, according to the World Bank).”); Buckley et al., *supra* note 14.

256. Companies' high fixed costs force customers to send larger amounts than they otherwise would, making the typical remittance about \$250. Jenny Surane & Christopher Cannon, *Libra Needs Facebook Users to Help Break Into \$714 Billion Payments Market*, BLOOMBERG (Aug. 27, 2019), <https://www.bloomberg.com/graphics/2019-facebook-libra-world-banking/> [<https://perma.cc/6LV5-S23J>].

257. Zetzsche et al., *supra* note 77, at 13.

require high fees like other financial services,²⁵⁸ remittances could insert significant amounts of Libra into local economies reliant on remittances such as the Philippines, Fiji, and Nepal.²⁵⁹ In turn, local merchants would likely begin accepting Libra as a form of payment for goods and services.²⁶⁰ Moreover, since companies are subjected to credit card merchant fees,²⁶¹ members of the Association such as Uber, Lyft, Amazon, and eBay would likely offer discounts for customers paying in Libra.²⁶² With widespread adoption and demand, Libra could potentially replace these expensive money transfer methods and provide a lower-cost, more efficient method for transferring money.²⁶³

In addition to reducing the cost of money transfers, Libra would also provide widespread access to currency.²⁶⁴ Two-thirds of unbanked adults, about 1.1 billion people, have a mobile phone.²⁶⁵ However, a smaller portion of unbanked adults have both a mobile phone and internet access.²⁶⁶ Using a phone for financial services can be done in one of two ways,²⁶⁷ and China and Kenya represent the two different models.²⁶⁸ In China, mobile financial services are provided through third-party payment service providers.²⁶⁹ However, in Kenya such services are provided by mobile network operators, and these accounts do not have to be connected to an account at a financial institution.²⁷⁰ In Kenya most account owners have a mobile money account in addition to an account with a financial institution, which reflects the way people make mobile payments.²⁷¹ Approximately 40% of Kenyan adults only use a mobile

258. For example, wire costs to overdraft and ATM charges. LIBRA WHITE PAPER, *supra* note 6, at 1.

259. Zetzsche et al., *supra* note 77, at 13.

260. *Id.*

261. Uber's annual fee for credit card merchant fees is currently over \$800 million. *Id.*

262. *Id.* at 13–14 (“Such tech companies often engage in below-cost pricing for long periods seeking market dominance and long-term, rather than short-term, profitability. Discounts on payments in Libra would fit into this pattern of behaviour and give rich country consumers a reason to adopt the currency.”).

263. *Id.* at 13.

264. LIBRA WHITE PAPER, *supra* note 6, at 2.

265. DEMIRGÜÇ-KUNT ET AL., *supra* note 1, at 11.

266. *Id.*

267. *See id.* at 7 (explaining the different ways of using a mobile phone for financial services by comparing Kenya and China).

268. *Id.*

269. These include AliPay and WeChat that are accessed through smartphone apps connected to an account at a bank or financial institution. *Id.*

270. *Id.*

271. *Id.*

money account for mobile payments, whereas 29% use a mobile money account and a mobile phone or the internet to access their financial institution account.²⁷² Only 2% of adults in Kenya make mobile payments by either using a mobile phone or the internet to access their financial institution accounts.²⁷³

Governments and businesses could substantially lessen the population of unbanked adults by moving regular cash payments into mobile accounts accessible by mobile phones.²⁷⁴ According to the Global Findex, this could reduce the number of unbanked adults by 100 million.²⁷⁵ Two-thirds of the unbanked adults who receive government transfers have mobile phones.²⁷⁶ There are approximately 230 million unbanked adults working in private employment who are paid in cash, and 78% of whom own a mobile phone.²⁷⁷ While the ability to have payments go into a Libra account from a mobile phone will not be as useful in countries with well-functioning payments systems, it could be transformative for the unbanked in other countries.²⁷⁸ Thus, surpassing these well-functioning payments systems currently in place will be another challenge for Libra in addition to the general distrust of Facebook.²⁷⁹

VI. LIBRA'S POTENTIAL

A. *Advantages*

Since launching in 2004, Facebook has built a technology powerhouse with more than 2.4 billion active users as of June 30, 2019.²⁸⁰ At the start of June 2019, Facebook had 1.59 billion active users.²⁸¹ On average, Facebook, Instagram, WhatsApp, and Facebook Messenger

272. *Id.* at 7–8.

273. *Id.* at 8.

274. *Id.* at 11.

275. *Id.* at 12.

276. *Id.*

277. *Id.*

278. Buckley et al., *supra* note 14.

279. *See id.* (explaining that Libra lacks the cash-in/cash-out functions provided in mobile money networks by small stores that sell items from phone airtime and mobile money services to groceries).

280. *Facebook Newsroom*, FACEBOOK, <https://newsroom.fb.com/company-info/> [<https://perma.cc/5AKB-RHFL>] (last visited Sept. 22, 2019).

281. *Id.*

have more than 2.1 billion daily users.²⁸² Calibra would be available through Facebook Messenger and WhatsApp, which are the two applications by which Facebook reaches billions of users.²⁸³ Facebook's massive platform is exactly what gives Libra the potential for seismic impact on financial inclusion.²⁸⁴ The pre-established social media platform would give Libra an edge by instantly establishing a cryptocurrency network of billions.²⁸⁵ Moreover, Facebook's user coverage would make it easier for global access, particularly in developing countries which account for the largest unbanked populations.²⁸⁶

B. Risks

Unfortunately for Libra, Facebook's massive social media platform, which gives it access to billions of users, is also its greatest liability.²⁸⁷ Given that Facebook's primary business consists of gathering information on users' identities and personality traits and using that data for its own economic gain, Libra might be at an increased risk of security breaches from hackers, as access to this rich database of identity information would be a gold mine target for hackers.²⁸⁸ Furthermore, as a global cryptocurrency with access to this database (i.e., through Facebook), a single breach could prove disastrous.²⁸⁹ When coupled with the fact that cryptocurrencies in general are already at risk for security and hacking, the risks of such a breach are amplified by the potential size of Libra that might be acquired through the Facebook platform.²⁹⁰

In the first half of 2019 alone, approximately \$4.26 billion in crypto holdings were lost globally as a result of security breaches by

282. *Id.*

283. Zetzsche et al., *supra* note 77, at 15.

284. *Id.*

285. *Id.*

286. *Id.*

287. Berry, *supra* note 11.

288. Roger Huang, *Seven Takeaways from Libra's Whitepaper*, FORBES (June 18, 2019), <https://www.forbes.com/sites/rogerhuang/2019/06/18/seven-key-takeaways-from-libras-whitepaper/#3741eafc6e55> [<https://perma.cc/4HRQ-STNM>].

289. See Constine, *Facebook Announces Libra*, *supra* note 79 (stating that a data breach of Libra would not only cost users around the world, but also hurt the credibility of cryptocurrencies).

290. Huang, *supra* note 288.

thieves and scammers.²⁹¹ Thus far, the only privacy guarantee offered by Facebook²⁹² is that Libra will allow its users to transact with each other with account numbers that are not tied to real-life identities.²⁹³ Libra's blockchain data is structured in a way that any user of Libra can access any data from any point in time.²⁹⁴ This structure allows third parties such as law enforcement to have access to the data in order to monitor activity; however, unlike a permissionless blockchain used by most cryptocurrencies like Ethereum, this public permissioned blockchain does not ensure the most ironclad privacy protections.²⁹⁵

The announcement of Libra came at a questionable time, as Facebook was being investigated for not regulating Russia's interference in the 2016 presidential election, its monopolistic advertising, and its part in circulating hate speech in Myanmar.²⁹⁶ These concerns were in addition to the U.S. government's probe into the company's privacy practices following the Cambridge Analytica scandal.²⁹⁷ Even though Facebook created Calibra to ensure separation between consumer financial data and the social media platform, many are understandably apprehensive of trusting the company with their finances.²⁹⁸ After Facebook's mishandling of user data with Cambridge Analytica, lawmakers want evidence that a user's banking and payment information will not be a tool for targeted advertising.²⁹⁹ If Facebook's Libra is

291. CIPHERTRACE, CRYPTOCURRENCY ANTI-MONEY LAUNDERING REPORT, 2019 Q2, at 4 (2019), <https://ciphertrace.com/wp-content/uploads/2019/08/CipherTrace-Cryptocurrency-Anti-Money-Laundering-Report-2019-Q2-1.pdf> [<https://perma.cc/3262-M6MG>].

292. Constine, *Lowlights*, *supra* note 82 (noting that Libra is considering a way to encode "know your customer" protections as an alternative to relying on developers to build protections into their wallets).

293. LIBRA WHITE PAPER, *supra* note 6, at 6; *see also* Huang, *supra* note 288 (arguing that permissionless chains, such as Ethereum, adopt more privacy protections).

294. LIBRA WHITE PAPER, *supra* note 6, at 5.

295. *See id.* at 4–5 (stating that the Libra blockchain will be "open to everyone"); *see also* Huang, *supra* note 288 (explaining that Libra's only privacy guarantee is the "loose implication that account activity on Libra can be created without being explicitly tied to a real-life account").

296. Berry, *supra* note 11.

297. Vengattil, *supra* note 94 ("The FTC privacy probe was triggered last year by allegations that Facebook violated a 2012 consent decree and inappropriately shared information of 87 million users with British political consulting firm Cambridge Analytica.").

298. Berry, *supra* note 11.

299. *Id.*

unable to appease lawmakers, there is a risk that it will create a permanent roadblock for other technology companies.³⁰⁰

C. *Currency Competition*

Experts and lawmakers' core concern over Facebook's proposal lies in their fear that Libra would threaten monetary policy, a core government function.³⁰¹ As Maxine Waters made clear during the Facebook hearings before the House of Financial Services Committee, she believes the cryptocurrency could yield such an immense economic power that it would destabilize the government.³⁰² When Libra is converted into real money, a new quantity of money is supplied in the market without the consent and control of the central banks.³⁰³ The entry of the new supply of money into the market without the consent of central banks could destabilize prices as well as monetary policy.³⁰⁴ "Euro-area" governments view stablecoins³⁰⁵ as a threat to the stability of the euro because some people in economically weaker countries may choose to put their money in a stablecoin rather than the euro.³⁰⁶ For example, some of Bitcoin's largest users include citizens of poor countries with "weak institutional environments."³⁰⁷ Bitcoin provides a solution to problematic national currency and monetary systems.³⁰⁸ If Libra is

300. *Id.* ("Increased scrutiny of Facebook appears likely to hurt big technology companies trying to enter the crypto or banking space - and ultimately may benefit traditional banks in the process.")

301. Zetzsche et al., *supra* note 77, at 23–24.

302. Press Release, Rep. Maxine Waters, Chairwoman, U.S. House Comm. on Fin. Servs., Waters to Facebook: Today's Hearing Is Only the First Step in Our Oversight and Legislative Process (July 17, 2019), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=404104> ("Ultimately, if Facebook's plans come to fruition, the company and its partners will wield immense economic power that could destabilize currencies and governments.")

303. See Zetzsche et al., *supra* note 77, at 23 (explaining how Libra will place a private company between national banks and its citizens).

304. *Id.* (arguing that once Libra is well established, its "global nature" will mean that the government will no longer have control over capital and thus, the government will not be able to use capital control as a policy measure used to prevent "capital flight in times of severe economic uncertainty").

305. Buckley et al., *supra* note 14 (defining stablecoins as a cryptocurrency whose value "is tied to that of fiat currency").

306. Raymond Colitt & Alastair Marsh, *Facebook's Obstacles in Europe Mount as Germany Opposes Libra*, BLOOMBERG (Sept. 18, 2019 7:06 AM), <https://www.bloomberg.com/news/articles/2019-09-18/germany-broadens-european-front-opposing-facebook-s-libra-plan> [<https://perma.cc/TC54-BKLN>].

307. Zetzsche et al., *supra* note 77, at 24.

308. *Id.*

widely adopted in countries with weak institutional environments, as expected, it could potentially shift control of monetary policy from governments to the Libra Association.³⁰⁹ In effect, Libra would put a private company between governments and the citizens it serves.³¹⁰

VII. CONCLUSION

By working with regulators to create a streamlined, more affordable, and more accessible form of payment, Libra could reach millions of unbanked adults, particularly in countries with developing economies.³¹¹ Facebook's global social media platform, with over 2 billion active users,³¹² could quickly empower Libra to become the most widely adopted form of cryptocurrency.³¹³ Facebook's pre-established network via WhatsApp and Messenger already puts Libra ahead of the curve before it has even launched.³¹⁴ However, Libra's affiliation with Facebook also inevitably involves the inheritance of the company's privacy concerns.³¹⁵

Libra has left too many unanswered questions for regulators and lawmakers to feel comfortable with the social media giant having access to millions of users' financial data.³¹⁶ This inherent skepticism accompanied by the news that four of the largest payments systems backed out of becoming Founding Members could very well lead to the collapse of the Libra project.³¹⁷ Regardless of Libra's success, it is likely that other similar proposals from BigTech companies will follow.³¹⁸ However, if lawmakers or regulators enact laws and policies before the collapse of Libra, it could potentially create a roadblock for other BigTech companies.³¹⁹ In other words, other cryptocurrencies could suffer from collateral damage if Libra is shut down after becoming

309. *Id.*

310. *Id.*

311. LIBRA WHITE PAPER, *supra* note 6, at 2.

312. FACEBOOK NEWSROOM, *supra* note 280.

313. Buckley et al., *supra* note 14.

314. Zetzsche et al., *supra* note 77, at 13.

315. *Id.* at 23.

316. See Constine, *Lowlights*, *supra* note 82 (suggesting Congress was unable to gain little, if any, new information on Libra from Zuckerberg at the hearing on October 23, 2019).

317. See Andriotis & Rudegeair, *supra* note 110 (describing the loss of the payments systems as a "painful setback" and a threat to derail the project).

318. Zetzsche et al., *supra* note 77, at 16.

319. *Id.*

subject to unnecessary regulations.³²⁰ Whether Libra comes to fruition or not, the Libra proposal is indicative of a developing framework for global monetary exchanges.³²¹

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320. *Id.*

321. *Id.*

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