

## V. *Regulation of Facebook's Libra*

### A. Introduction

Facebook recently announced its new currency, termed Libra.<sup>1</sup> Libra's mission is to "enable a simple global currency and financial infrastructure that empowers billions of people."<sup>2</sup> Globally, about 1.7 billion adults do not have access to traditional banking and international money transfer fees average around 7% of the amount transferred.<sup>3</sup> Libra's goal is to give the underbanked, along with everyone else, access to a new currency and financial system.<sup>4</sup> Cryptocurrencies can create value because they have: (1) distributed governance, which ensures no single entity controls the network; (2) open access, which allows anyone with an internet connection to participate; and (3) security through cryptography, which protects the integrity of the funds.<sup>5</sup> Given Facebook's infamous history with data privacy, it has also established an independent subsidiary "Calibra" to handle all matters, regulation, and privacy concerns relating to Libra.<sup>6</sup>

### B. What Are Cryptocurrencies?

Cryptocurrencies are a digital form of money used to facilitate payments over the internet.<sup>7</sup> Cryptocurrencies are protected using cryptography, a technology that provides various controls to facilitate cryptocurrency transactions and creation.<sup>8</sup> Cryptography secures cryptocurrency transactions and controls the creation of new units of the cryptocurrency using "blockchain" technology.<sup>9</sup> There are thousands of different cryptocurrencies currently on the market, Bitcoin being the most popular, followed by others such as Ethereum

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<sup>1</sup> LIBRA ASS'N MEMBERS, AN INTRODUCTION TO LIBRA 3 (2019) (introducing Libra as the new cryptocurrency Facebook is launching).

<sup>2</sup> *Id.* at 1 (introducing Libra's mission statement).

<sup>3</sup> *Id.* (explaining the problem Libra is attempting to solve).

<sup>4</sup> *Id.* (introducing the goals of Libra and its purpose).

<sup>5</sup> *Id.* (discussing the value proposition of Libra as a cryptocurrency).

<sup>6</sup> *Id.* at 4 (explaining the need for creating an independent subsidiary).

<sup>7</sup> USMAN W. CHOHAN, CRYPTOCURRENCIES: A BRIEF THEMATIC REVIEW, 1 (2017) (defining cryptocurrencies).

<sup>8</sup> *Id.* (explaining that cryptography is the technology that allows cryptocurrency work on a distributed ledger).

<sup>9</sup> *Id.* (describing the concept of the blockchain, and how it provides security to cryptocurrency transactions).

and Primecoin.<sup>10</sup> Bitcoin was created to facilitate electronic payments using cryptographic proof instead of relying on a trusted third-party to verify transactions;<sup>11</sup> put simply, Bitcoin allows parties to exchange “money” directly with each other, without needing a third party to verify the transaction.<sup>12</sup> To date, cryptocurrencies have been largely unsuccessful in their goal to be used as a form of electronic payment because of their volatility.<sup>13</sup> While Bitcoin has recently been accepted as a form of payment by some online vendors, the amount of vendors that accept Bitcoin as a form of payment is very small.<sup>14</sup> Instead, due to cryptocurrencies’ high volatility, they have mainly been used as an investment vehicle.<sup>15</sup>

### 1. *Blockchain*

Blockchain technology is an essential part of cryptocurrencies.<sup>16</sup> To illustrate the concept of blockchain, first, imagine digital information about a transaction being stored into a single block.<sup>17</sup> Each of these blocks of information connect to each other via a chain that is

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<sup>10</sup> *Id.* (giving examples of popular cryptocurrencies and showing the large number currently in the market).

<sup>11</sup> SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM 1 (2008) (outlining that the problem Bitcoin’s author was attempting to solve was making a peer-to-peer payment system without the need to go through for financial institutions).

<sup>12</sup> *Id.* (outlining how Bitcoin would function and its intended purpose).

<sup>13</sup> CHOHAN, *supra* note 7, at 3 (finding that cryptocurrencies fluctuate dramatically in value and are not optimal to be used a currency for exchange).

<sup>14</sup> Anthony Cuthbertson, *Bitcoin now Accepted at Starbucks, Whole Foods and Dozens of Other Major Retailers*, INDEPENDENT (May 14, 2019), <https://www.independent.co.uk/life-style/gadgets-and-tech/news/bitcoin-stores-spend-where-starbucks-whole-foods-crypto-a8913366.html#targetText=In%20total%2C%20around%20100%20merchants,totalling%20more%20than%2030%2C000%20stores> [<https://perma.cc/B97A-TWLA>] (reporting that about 100 merchants are going to be accepting bitcoin as a form of payment by the end of 2019).

<sup>15</sup> *Id.* (finding that cryptocurrencies have high price volatility and are mainly used as investments).

<sup>16</sup> NAKAMOTO, *supra* note 11, at 2 (summarizing the value cryptography adds to cryptocurrencies).

<sup>17</sup> Luke Fortney, *Blockchain Explained*, INVESTOPEDIA (June 25, 2019), <https://www.investopedia.com/terms/b/blockchain.asp> [<https://perma.cc/RP6B-L63L>] (explaining in more detail the concept of blockchain).

able to authenticate each block.<sup>18</sup> One of the most important features of the blockchain is the hash.<sup>19</sup> Each time a transaction is made, each owner transfers the cryptocurrency to the next by “digitally signing” a “hash” which contains previous transaction information (proving the current owner rightfully obtained the coin) and the public key of the next owner (so the new owner may prove he or she rightfully obtained the coin).<sup>20</sup> This system eliminates double counting, i.e. an owner using the same unit of cryptocurrency to make two transactions, by having a public ledger to verify each transaction.<sup>21</sup> Traditionally, this confirmation process is done by a trusted third party, such as a bank; however, blockchain allows each user to verify the transaction using the public ledger.<sup>22</sup> Each transaction is timestamped, publicly announced, and made part of the public ledger that each computer in the network has a copy of.<sup>23</sup> Once a new transaction is made, a majority of the nodes in the network must agree the owner could transfer that specific unit of cryptocurrency.<sup>24</sup> Normally, new nodes can be made instantaneously, which can allow an attacker to create fake verifications of transaction.<sup>25</sup> To prevent this, a “proof-of-work” is required to create a new node,<sup>26</sup> which requires a computer to solve a complex math problem taking approximately ten minutes before it can validate a transaction and thus limits the amount of new nodes that can be created.<sup>27</sup> Once a block is verified by more than half of the nodes, it is added to the chain.<sup>28</sup> For an attacker to modify a past block, the attacker would have to redo the proof-of-work for that block and

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<sup>18</sup> *Id.* (explaining the concept of the “chain” in blockchain).

<sup>19</sup> *Id.* (clarifying the concept of the “hash” in blockchain).

<sup>20</sup> NAKAMOTO, *supra* note 11, at 2 (describing cryptography and the concept and importance of a hash).

<sup>21</sup> *Id.* at 3 (providing examples of the biochanin’s safeguards, such as using hashes, to protect against misinformation in the network).

<sup>22</sup> *Id.* at 2 (describing the value proposition of cryptocurrency and the lack of a need for third party verification).

<sup>23</sup> Fortney, *supra* note 17 (explaining the value of timestamping a transaction in the blockchain).

<sup>24</sup> NAKAMOTO, *supra* note 11, at 2 (explaining cryptography and the process of accepting a new transaction).

<sup>25</sup> *Id.* at 3 (showing the vulnerability of cryptography as a system).

<sup>26</sup> Fortney, *supra* note 17 (explaining proof-of-work authentication as a fix to the traditional cryptography problem).

<sup>27</sup> *Id.* (describing how the proof-of-work works in order to prevent attacks).

<sup>28</sup> NAKAMOTO, *supra* note 11, at 3 (explaining the verification process of a new block in the blockchain).

all subsequent blocks, as well as surpass the work of the other nodes.<sup>29</sup> The ability of the attacker to catch up to the other nodes also exponentially deteriorates as other blocks are added through the proof-of-work.<sup>30</sup> The attacker would have to exceed the combined computing power of more than half of all the other members in order to successfully attack the network, which becomes especially difficult when the size of the user base is large.<sup>31</sup>

## 2. *Anonymity Problem*

Since each transaction is announced publicly, a pseudonym must be given to each transaction, or else everyone in the network could trace the parties receiving and giving the cryptocurrency.<sup>32</sup> The need for anonymity creates a computer-generated “public key” to identify each transaction.<sup>33</sup> This public key is separate from the “private key” that contains the individual’s true information.<sup>34</sup> Blockchain traditionally relies on a decentralized system of authentication; no entity has access to the links between the private and public keys.<sup>35</sup> Each time a transaction is made, the time and amount of the transaction is made public, but not the private names of the parties involved.<sup>36</sup> The anonymity of each party concerns many lawmakers because it can facilitate activities such as money-laundering and other criminal behavior.<sup>37</sup>

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<sup>29</sup> *Id.* (explaining the intrinsic security features of long blockchains).

<sup>30</sup> *Id.* (describing the value of the proof-of-work system to ward off attackers).

<sup>31</sup> *Id.* (showing the security of the blockchain exponentially increases as the number of users increases).

<sup>32</sup> *Id.* at 6 (clarifying the inherent anonymity problem with blockchains is that a third party can only view the public key, which does not any identifying information, rather than the private key of a node).

<sup>33</sup> *Id.* (explaining what a public key is and its necessity in the blockchain system).

<sup>34</sup> *Id.* (clarifying the difference between a private key and a public key).

<sup>35</sup> *Id.* (describing how the decentralization of authority creates the anonymity by having no link between the keys).

<sup>36</sup> *Id.* (explaining what information about transactions in the blockchain are reported publicly).

<sup>37</sup> Jon Hill & Philip Rosenstein, LIBRA SPARKS BIPARTISAN ANGST, BUT WHAT CAN REGULATORS DO, LAW 360 (July 12, 2019), <https://www-law360-com.ezproxy.bu.edu/articles/1177883/libra-sparks-bipartisan-angst-but-what-can-regulators-do-> (clarifying some of the concerns lawmakers have, e.g. the

### C. What Is Libra?

Libra is composed of three major parts: (1) the blockchain used to run the cryptocurrency; (2) a reserve of assets designed to back up the currency known as the “Libra Reserve;” and (3) an independent association tasked with governing the project known as the “Libra Association.”<sup>38</sup>

#### 1. *The Libra Blockchain*

Libra will use standard cryptography, similar to cryptography used in other cryptocurrencies and financial institutions, to secure its transactions.<sup>39</sup> Libra will allow open access to its blockchain in order to facilitate global commerce and low transactional costs.<sup>40</sup> Low transaction costs come due to the peer-to-peer validation that is done by each validator node, eliminating the need for an independent third party to validate each transaction.<sup>41</sup> A unique characteristic of Libra is that while it will operate on a public ledger similar to other cryptocurrencies, the initial validating nodes will only consist of the members of the Libra Association.<sup>42</sup> Limiting the validating nodes further secures the cryptocurrency because the only way an attacker can forge transactions and use double-counting is by gaining control of more than 51% of the validator nodes.<sup>43</sup> The attacker will not be able to gain control of the validator nodes because each node belongs to a verified member of the Libra Association, unlike a public system where each new account can have a validator node.<sup>44</sup> Facebook claims it will decentralize the blockchain five years after Libra is released by

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fact that this level of anonymity can easily facilitate criminal activities such as money laundering).

<sup>38</sup> LIBRA ASS'N MEMBERS, *supra* note 1, at 3 (providing the three major components of Libra).

<sup>39</sup> ZACHARY AMSDEN ET AL., THE LIBRA BLOCKCHAIN 2 (2019) (reporting the type of authentication system Libra will use).

<sup>40</sup> *Id.* (summarizing Libra’s whitepaper regarding the access to its blockchain).

<sup>41</sup> *Id.* (explaining the value proposition of cryptocurrency and peer-to-peer authentication).

<sup>42</sup> *Id.* (describing Libra’s whitepaper regarding its blockchain and details regarding the Libra Association).

<sup>43</sup> NAKAMOTO, *supra* note 11, at 4 (clarifying an inherent weakness in cryptography and the blockchain).

<sup>44</sup> *Id.* (explaining how an attacker can hack a public network when new validator nodes can always be created).

providing access to other validator nodes which will each have a proportional share of power in accordance with their overall share of the cryptocurrency.<sup>45</sup> By doing this, Facebook has effectively eliminated the risk of attack on the network because as the size of the user base grows, the chance of a successful attack that can outwork all the other validator nodes decreases exponentially.<sup>46</sup>

## 2. *The Libra Reserve*

Libra's most unique characteristic, and the fact that it may be able to serve as a true medium of exchange, is the Libra Reserve.<sup>47</sup> Other cryptocurrencies, like Bitcoin, are very volatile and cannot truly serve as a substitute for regular currency because of their extreme price fluctuations.<sup>48</sup> Bitcoin can vary in value by 5% each day, and consumers are hesitant to use a currency that is worth \$100 at the start of the week, but only \$80 by the end of the week.<sup>49</sup> However, Libra will be tied to real financial assets, such as government-issued bonds and other financial instruments, that will stabilize its value and make it a more useable form of currency.<sup>50</sup> Furthermore, each time a new unit of Libra is created, additional assets will be added to support the currency, likely allowing Libra to maintain a consistent value so it may

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<sup>45</sup> ZETZSCHE ET AL., UNIVERSITY OF NEW SOUTH WALES LAW RESEARCH SERIES NO. 47, REGULATING LIBRA; THE TRANSFORMATIVE POTENTIAL OF FACEBOOK'S CRYPTOCURRENCY AND POSSIBLE REGULATORY RESPONSES 9 (2019) (summarizing Libra's whitepaper in regards to its blockchain validator nodes).

<sup>46</sup> NAKAMOTO, *supra* note 11, at 4 (describing how the chance of an attacker succeeding as the userbase grows are exponentially diminishing).

<sup>47</sup> ZETZSCHE ET AL., *supra* note 45, at 3 (providing examples other cryptocurrencies, and the fact that they are not mediums of exchange because of their volatility).

<sup>48</sup> *Id.* at 4 (explaining other cryptocurrencies and their price volatility).

<sup>49</sup> Jeff John Roberts, *Bitcoin Comes to Whole Foods, Major Retailers in Coup for Digital Currency*, FORTUNE (May 13, 2019), <https://fortune.com/2019/05/13/bitcoin-comes-to-whole-foods-major-retailers-in-coup-for-digital-currency/> [<https://perma.cc/F8SU-XKCW>] (explains consumer's hesitance to use bitcoin because of the price fluctuations the volatility it can have in a week).

<sup>50</sup> *Id.* (summarizing Libra's whitepaper regarding the Libra Reserve).

be used to purchase goods and services, rather than serve only as an investment vehicle.<sup>51</sup>

### 3. *The Libra Association*

Libra will be governed by an independent Libra Association that oversees all decisions, regulations, and matters relating to Libra, of which Calibra will be one of the one hundred members.<sup>52</sup> This association is an example of Facebook's commitment to not be the direct authority over Libra due to past data privacy scandals.<sup>53</sup> The Libra Association will consist of one hundred members, with a ten million dollar membership fee to be a founding member.<sup>54</sup> Calibra and each member of the Libra Association will have one percent voting power.<sup>55</sup> At its peak, the Libra Association had twenty-eight members, including major financial services corporations such as Mastercard and Visa.<sup>56</sup> PayPal, however, recently left the Libra Association without further comment.<sup>57</sup> More bad news followed as PayPal's departure led to a cascade of other members leaving the association.<sup>58</sup> Other big name members that dropped out include eBay, Visa, Mastercard, Stripe, and Mercado Pago, bringing the total remaining members to

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<sup>51</sup> *Id.* (reporting that each new unit of Libra issue will have a new investment backing up its value).

<sup>52</sup> LIBRA ASS'N MEMBERS, *supra* note 1, at 8 (explaining the governance role of the Libra Association).

<sup>53</sup> ZETZSCHE ET AL., *supra* note 45, at 5 (summarizing Libra's whitepaper regarding the Libra Association).

<sup>54</sup> LIBRA ASS'N MEMBERS, *supra* note 1, at 8 (providing the names of the members of the Libra Association).

<sup>55</sup> *Id.* at 9 (describing the voting power of the Libra Association).

<sup>56</sup> *Id.* at 4 (listing the current members of the Libra Association).

<sup>57</sup> Mike Isaac et al., *PayPal Pulls Out of Libra, Facebook's Cryptocurrency Project*, N.Y. TIMES (Oct. 4, 2019), <https://www.nytimes.com/2019/10/04/technology/paypal-facebook-cryptocurrency-libra.html> [<https://perma.cc/X4MH-MTKV>] (observing that PayPal has withdrawn from the Libra Association).

<sup>58</sup> Richard Partington, *How the Wheels Came off Facebook's Libra Project*, THE GUARDIAN (Oct. 18, 2019), <https://www.theguardian.com/technology/2019/oct/18/how-the-wheels-came-off-facebook-libra-project> [<https://perma.cc/SQ57-2RJ3>] (reporting the Libra Association members that left the association after PayPal's departure).

twenty-one.<sup>59</sup> However, the Libra Association recently held its first meeting and did not seem concerned by the number of members leaving.<sup>60</sup> The Libra Association said that more than 1,500 entities have expressed interest in joining the project, with 180 of those meeting the Association's membership requirements.<sup>61</sup>

However, with the Libra Association governing, this goes against one of the central principles of being a cryptocurrency: a lack of centralized authority.<sup>62</sup> One of the core propositions of a cryptocurrency is to remove the need of a trusted third party from having authority to verify transactions and make decisions for the cryptocurrency.<sup>63</sup> However, the Libra Association does exactly that; it is a third party that not only possesses the sole power to validate nodes, but has the sole authority of creating and destroying units of Libra.<sup>64</sup> Ironically, the Libra Association may be the only way Libra can comply with many regulations, including anti-money laundering (AML) and countering the financing of terrorism (CFT) regulations.<sup>65</sup>

#### D. Regulations

The major problem Libra faces, similar to other cryptocurrencies, is being able to prevent its involvement in money laundering, tax evasion, and illegal purchases.<sup>66</sup> At a minimum, there is consensus among lawmakers that Libra will be subject to both AML and CFT

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<sup>59</sup> *Id.* (providing the names of the members of the Libra Association that left and number that are remaining).

<sup>60</sup> Nikhilesh De, *Facebook-Led Libra Forms Governing Council After Big-Name Departures*, COINDESK (Oct. 14, 2019), <https://www.coindesk.com/facebook-led-libra-forms-governing-council-after-big-name-departures> [<https://perma.cc/M35F-NDJR>] (clarifying some of the details of the Libra Association's first meeting).

<sup>61</sup> *Id.* (reporting on the Libra Association's comments regarding the number of applicants interested in joining the association).

<sup>62</sup> NAKAMOTO, *supra* note 11, at 4 (outlining the core concept of cryptocurrency is the peer-to-peer authentication).

<sup>63</sup> *Id.* at 3 (reporting the core concept of cryptocurrency is the peer-to-peer authentication).

<sup>64</sup> ZETZSCHE ET AL., *supra* note 45, at 3 (summarizing Libra's whitepaper regarding the Libra Association's powers).

<sup>65</sup> *Id.* at 15 (exploring various regulation relating to anti-money laundering).

<sup>66</sup> Reuben Grinberg, *Bitcoin: An Innovative Alternative Digital Currency*, 4 HASTINGS SCI. & TECH. L.J. 160, 161 (2011) (providing the major issues affecting cryptocurrencies in general).



regulations.<sup>67</sup> However, beyond those regulations, it becomes harder to predict because the U.S. financial regulatory structure does not have large-scale, uniform, comprehensive cryptocurrency regulation.<sup>68</sup> Agencies have taken a fragmented approach to regulating cryptocurrency, but as of now, no single agency is in a position to have comprehensive authority over the Libra Blockchain, the Libra Reserve, or the Libra Association.<sup>69</sup>

### *I. The Securities and Exchange Commission*

While the Securities and Exchange Commission (SEC) has not yet designated Libra as a security, if it does, this will impose significant disclosure requirements upon Libra.<sup>70</sup> A “security” is broadly defined under Section 2(a)(1) of the Securities Act of 1933 (33 Act) to include “investment contracts” as securities.<sup>71</sup> Courts have adopted a four-part test to determine whether a financial instrument is an “investment contract” and thus falls under the SEC’s authority.<sup>72</sup> The test includes whether an individual “[1] invests his money in [2] a common enterprise and [3] is led to expect profits [4] solely from the efforts of the promoter or a third party.”<sup>73</sup> Libra might be subject to the 33 Act because, unlike other cryptocurrencies, it may be possible to show a “common enterprise” due to the Libra Reserve.<sup>74</sup> The first factor, an investment of money, is easily met because in order to obtain a unit of Libra, you must exchange money for it.<sup>75</sup> The second factor, an investment in a common enterprise, has typically been a

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<sup>67</sup> ZETZSCHE ET AL., *supra* note 45, at 15 (clarifying the consensus among regulators for minimum regulations).

<sup>68</sup> Hill, *supra* note 37 (posing the questions that regulators still have when it comes to regulating Libra).

<sup>69</sup> *Id.* (explaining the different approaches that agencies in the US have taken towards regulating Libra).

<sup>70</sup> *Id.* (describing the regulatory consequences of Libra being labeled a “security” by the SEC).

<sup>71</sup> Grinberg, *supra* note 66, at 194 (providing regulatory consequences of Libra being a “security” under the SEC).

<sup>72</sup> *Id.* (outlining the four-part test courts developed to determine an investment contract).

<sup>73</sup> *Id.* at 196 (citing SEC v. W.J. Howey Co., 328 U.S. 293, 298–99 (1946)).

<sup>74</sup> ZETZSCHE ET AL., *supra* note 45, at 18 (summarizing Libra’s whitepaper regarding the Libra Reserve).

<sup>75</sup> *Id.* at 196–97 (providing part one of the four-part test).

difficult issue to prove for other cryptocurrencies.<sup>76</sup> However, for Libra, the Libra Reserve, a large pool of assets backing Libra, may be considered a “common enterprise” by courts and the SEC, subjecting Libra to the 33 Act.<sup>77</sup> The third factor, an expectation of profits, has usually been met in other cryptocurrency cases because digital coins are mainly used as an investment vehicle given their volatile price.<sup>78</sup> However, this expectation of profit likely will be more difficult to prove with Libra because it is intended to be used in payment systems as a stable currency with minimum volatility.<sup>79</sup> The fourth factor, solely on the efforts of others, is also satisfied by the fact that the Libra Association will be the one managing the large asset pool and making decisions relating to Libra.<sup>80</sup>

Even if Libra is not designated as a “security,” the Libra Association may still be subject to SEC regulation under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 as an investment fund.<sup>81</sup> Regulators could view Libra as a money market fund, thus exposing Libra to regulation under either of the previously mentioned acts.<sup>82</sup> Libra may be viewed as a money market fund because the Libra Reserve is the key mechanism for preserving the intrinsic value of the cryptocurrency, thus, investors will rely on this reserve when making their investment.<sup>83</sup> The Libra Reserve will, in turn, be invested in bank deposits, government securities, and fiat currencies, with the goal of capital preservation and liquidity, which is very similar to a money market fund that invests in short-term liquid

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<sup>76</sup> *Id.* at 197–98 (explaining part two of the four-part test).

<sup>77</sup> CHRISTIAN CATALINI ET AL., *THE LIBRA RESERVE 1* (2019) (exploring the intent of Libra to be backed by an asset pool to stabilize value of the cryptocurrency).

<sup>78</sup> Grinberg, *supra* note 66, at 198 (explaining part three of the four-part test).

<sup>79</sup> LIBRA ASS’N MEMBERS, *supra* note 1, at 3 (reporting the intent of Libra, as stated by the whitepaper, is to be used as a payment system).

<sup>80</sup> Grinberg, *supra* note 66, at 198–99 (explaining part four of the four-part test).

<sup>81</sup> GLOBAL LEGAL GROUP LTD., *BLOCKCHAIN & CRYPTOCURRENCY REGULATION* 489 (Josias Dewey et al. eds., 2019) (providing other ways the SEC could regulate Libra even though it may not be a security).

<sup>82</sup> ZETZSCHE ET AL., *supra* note 45, at 18 (exploring the possibility of regulators finding Libra to be a money market fund because of Libra users’ reliance on the reserve pool for their investment).

<sup>83</sup> CATALINI ET AL., *supra* note 77, at 1 (stating that the Libra Reserve will be the main way in which the intrinsic value of Libra will be preserved).

investments.<sup>84</sup> Therefore, Libra may be regulated under 33 Act because it will likely pass the “common enterprise” test, or under either the Investment Company Act of 1940 or the Investment Advisers Act of 1940 because it may be viewed as a money market fund.

## 2. *AMT and CFT Regulations*

Money laundering and terrorism financing are often regulated together, so if a cryptocurrency implicates one, it likely implicates both.<sup>85</sup> The Bank Secrecy Act, as amended by the Financial Crimes Enforcement Network, requires a “money services business” serving a “money transmitter” purpose to track personal data, implement anti-money laundering procedures, and report suspicious transactions.<sup>86</sup> Libra will at a minimum be required to comply with the Bank Secrecy Act because one of its goals is to transmit money as payment between entities that accept digital payments.<sup>87</sup> Additionally, the Money Laundering Control Act of 1986 criminalizes money laundering, even the knowing facilitation of money laundering.<sup>88</sup> Given the already-known widespread use of cryptocurrencies for illegal activities, this could pose serious liability problems for Libra if they do not take extra steps to protect against their users money laundering.<sup>89</sup>

### **E. Conclusion**

Given Libra’s scheduled launch for the first half of 2020, regulators must quickly decide how they want to handle Libra.<sup>90</sup> Libra

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<sup>84</sup> CATALINI ET AL., *supra* note 77, at 2 (describing the actual assets that will be backing the Libra coin, through the Libra reserve, and its focus on liquidity and capital preservation).

<sup>85</sup> *Id.* at 204 (discussing the similarities in treatment for anti-money laundering and anti-terrorism regulation).

<sup>86</sup> *Id.* (outlining the requirements companies have to meet under anti-money laundering and anti-terrorism funding regulations).

<sup>87</sup> ZETZSCHE ET AL., *supra* note 45, at 15 (summarizing Libra’s whitepaper regarding its uses).

<sup>88</sup> Grinberg, *supra* note 66, at 205 (analyzing the Money Laundering Control Act of 1986).

<sup>89</sup> *Id.* at 206 (posing the possible dangers cryptocurrency exchanges could face).

<sup>90</sup> LIBRA ASS’N MEMBERS, *supra* note 1, at 4 (reporting the expected launch date for Libra).

will not only face obstacles from U.S. regulation, but also cross-border regulation.<sup>91</sup> Inconsistent regulation in different countries can have a negative impact on some of the advantages offered by Libra.<sup>92</sup> Specifically, the European Union's General Data Protection Regulation will likely pose a significant hurdle for Libra and cryptocurrency in general.<sup>93</sup> The main point of contention is that Libra must be able to "erase" the data of any user at their request.<sup>94</sup> Initially, this may be possible when the validator nodes will only be those controlled by the Libra Association because controlling all the validator nodes allows you to alter the data in the blockchain, including deleting data.<sup>95</sup> However, once the authority is truly decentralized, it will be almost impossible to erase the data from the blockchain because more than half of the validator nodes will need to agree on it, which will be almost impossible when spread through millions or billions of validator nodes.<sup>96</sup>

Although Facebook is launching Libra as a "cryptocurrency," Libra is not like other cryptocurrencies.<sup>97</sup> Besides using blockchain and cryptography, Libra is dedicated to setting itself apart from others.<sup>98</sup> Libra is going against one of the main goals of crypto-

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<sup>91</sup> ZETZSCHE ET AL., *supra* note 45, at 24 (outlining concerns regarding international regulations).

<sup>92</sup> *Id.* (observing that different treatment and regulation in various countries can have a negative impact on Libra's global mission).

<sup>93</sup> Jerry Brito, *What does the EU's General Data Protection Regulation Mean for Open Blockchain Networks?*, COIN CENTER (Apr. 5, 2018), <https://coincenter.org/link/what-does-the-eu-s-general-data-protection-regulation-mean-for-open-blockchain-networks> [<https://perma.cc/5H6U-TQG9>] (exploring the possible implications the GDPR can have on cryptocurrencies).

<sup>94</sup> *Id.* (explaining the implications the GDPR can have on cryptocurrencies)

<sup>95</sup> LIBRA ASS'N MEMBERS, *supra* note 1, at 5 (reporting that the validator nodes will be exclusively in the control of the Libra Association members, at least in the first five years).

<sup>96</sup> *Id.* (showing the intent for Libra to become truly a public cryptocurrency, making any member of the network a validator node, including non-association nodes).

<sup>97</sup> Jessica Bursztynsky, *Libra's Co-Creator at Facebook Touts Progress after an Exodus of Key Backers of the Crypto Coin*, CNBC (Oct. 16, 2019), <https://www.cnbc.com/2019/10/16/libras-co-creator-touts-progress-after-exodus-of-the-crypto-backers.html> [<https://perma.cc/MH76-GL9W>] (reporting a news segment video where Libra's Co-Creator explains the concept).

<sup>98</sup> *Id.* (describing the need for Libra to distinguish itself from other cryptocurrencies so that it can be viewed as more reliable).

currencies: the decentralization of authority, by placing authority directly in the Libra Association, and giving the currency intrinsic value through the Libra Reserve.<sup>99</sup> While the strong centralized role of the Libra Association will greatly assist Libra in satisfying various regulatory standards, the value proposition of a peer-to-peer transaction system is undermined by such strong central control.<sup>100</sup> Libra will serve an important first step towards a more modern financial system. Using new forms of technology, such as cryptography, can make our financial systems more efficient and reduce fees.<sup>101</sup> However, besides using cryptography to reduce transaction costs, Libra will not be a true cryptocurrency because of the strong centralized authority of the Libra Association.<sup>102</sup> The Libra Association will be very similar to governments controlling their own currency by regulating transactions, creating new units of Libra, and destroying Libra.<sup>103</sup> Even with the Libra Association's strong control over the currency, Libra will be a great first step to improving financial systems through the use of new technologies.

Inri Panajoti<sup>104</sup>

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<sup>99</sup> NAKAMOTO, *supra* note 11, at 3 (analyzing the core value of peer-to-peer authentication).

<sup>100</sup> *Id.* (discussing the core value of peer-to-peer authentication).

<sup>101</sup> Bursztynsky, *supra* note 97 (predicting that Libra's future fees for international transfers will be in the range of one to three percent, as opposed to the average of seven percent currently being charged).

<sup>102</sup> NAKAMOTO, *supra* note 11, at 1 (arguing that the main benefits of cryptocurrencies are lost if a trusted third party is required to authenticate each transaction).

<sup>103</sup> LIBRA ASS'N MEMBERS, *supra* note 1, at 8 (stating that the Libra Association is the only party able to create or destroy Libra coins).

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