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ANY PRESS IS GOOD PRESS: LIBRA AND THE REGULATORY AWAKENING

by Daniel S. Alter

In the past several weeks, cryptocurrency has engendered its greatest congressional response to date. Although the reaction seems overwhelmingly negative, those who ascribe to the philosophy that any press is good press may nevertheless welcome the attention. Finally, something has caught Congress' serious attention.

On June 18, 2019, Facebook [announced](#) the creation of Calibra, a newly formed subsidiary that will provide wallet services for Libra, a Facebook-backed cryptocurrency planned to launch in 2020. The Libra [white paper](#) outlines an initially "permissioned" (i.e., private) crypto-payments system that, at first, will be maintained by a group of [28](#) institutions. This founding consortium will include major fintech and credit card companies, venture capital firms, and several nonprofit organizations. As [self-described](#), the payment network will be "built on a secure, scalable, and reliable blockchain," which is "backed by a reserve of assets designed to give it intrinsic value" and "governed by the independent Libra association."

Make no mistake, though, Facebook is driving Libra's global rollout and is [admittedly](#) "expected to maintain a leadership role through 2019." But if everything goes well in launching this new cryptocurrency, Facebook's "leadership role" in the Libra association is likely to extend far beyond a year. With its approximately [2.4 billion](#) users per month, only a fraction of Facebook patrons need open a Calibra wallet to make Facebook the preeminent force in a Libra economy.

Moreover, considering the billions of Facebook account holders that might opt to transact in Libra rather than U.S. dollars (or other fiat currencies), Chairman Powell of the Federal Reserve Board has expressed [concern](#) that the Libra network could quickly become a systemically important financial institution with the power to affect global financial stability. That's a jarring prospect for Congress, made all the more fraught with perceived peril specifically *because* Facebook is the face of Libra. So shaken, the House Committee on Financial Services called for a "[moratorium](#)" on developing the Libra network any further.

Congress does not *trust* Facebook. Not even a little. The recent oversight hearings targeting Libra make the misgivings clear.

Before the [Senate Banking Committee](#), a senior Facebook executive "faced a dais of almost unanimous skepticism" where the "bipartisan opposition to Libra [was] on full display." As described

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by the [Wall Street Journal](#), “the hearing in part showed the toll of a series of missteps and scandals over the past several years that have dented [Facebook’s] reputation.”

Senator Sherrod Brown, an Ohio Democrat, pulled no punches. “Facebook’s motto is to move fast and break things,” Brown [said](#). “They’ve moved fast and are helping to undermine our democracy. Now they are expecting us to trust them with our paychecks.” He [warned](#) that “through scandal after scandal” Facebook “doesn’t deserve our trust” and that “[w]e’d be crazy to give [Facebook] a chance to experiment with people’s bank accounts.”

Republican Senator Martha McSally from Arizona echoed that sentiment. In a verbal slap to Facebook, she made her suspicions succinctly clear. “I don’t trust you guys,” [she said](#).

The House Financial Services Committee held its own Libra hearing the following day. One reporter [characterized](#) the “tone” of that examination as “far more harsh” than the Senate’s inquiry. Another journalist branded the hearing as “[combative](#).” Like the senators before them, members of the [House committee](#) “expressed skepticism over Facebook’s decision to delve into digital currency and financial services before it tackled other problems around privacy and election meddling.” Their comments ranged from the critical to the hysterical.

Republican Representative Ann Wagner from Missouri voiced her [concern](#) “that a 2020 launch date demonstrates deep insensitivities around how Libra could impact our national security, the global financial system, the privacy of people across the globe, criminal activity and international human rights.” Congressman Andy Barr, a Republican from Kentucky, confirmed some of the same fears when he [asked](#) Facebook’s witness to tell him “how Libra will not undermine sovereign currencies and the power of central banks.”

Congresswoman Carolyn Maloney, a Democrat from New York and senior committee member, flatly [stated](#) that, “I don’t think [Facebook] should launch Libra at all because the creation of a new currency is a core government function.” And Representative Brad Sherman, a California Democrat, apparently went over the edge when he [opined](#) that Libra “may do more to endanger America” than the 9/11 attacks.

The irony of this seemingly dyed-in-the-wool *distrust* for Libra should not be lost on anyone. As those working in the fintech space know well, it is “[not uncommon for those associated with cryptocurrency to claim that the blockchain replaces trust](#).” Rather than placing trust in a financial intermediary (like a bank), the [argument](#) goes, cryptocurrency users can instead rely on the objective integrity of “unchangeable mathematical algorithms” and a decentralized, redundant, and therefore incorruptible system of stored data. Blockchain evangelists have used the promise of a [trustless system](#) as a “rallying cry” for those seeking “to completely eliminate trust from monetary relations.”

[Others](#) take a more “nuanced” view—that blockchains “don’t actually eliminate trust,” but instead “minimize the amount of trust required from any single actor in the system.” That is to say “a transaction on the blockchain involves shifting the trust that would otherwise repose in a specific trusted intermediary . . . and instead placing that trust in the underlying blockchain system.”

Yet common sense tells us that blockchains are like any other technological system. [They “combine software code and human activity,” and it’s “not enough to trust the computers, which, after all, are built and programmed by people.”](#) By all indications, Congress would agree.

So, what should we expect to come?

Presently, regulation of cryptocurrency in the United States falls principally to state authorities (with some participation by the federal Treasury Department's Financial Crime Enforcement Network) under the rubric of money transmission licensing. Generally, that regulatory structure has been successful, as far as it goes. To varying degrees, these state agencies supervise the safety and soundness of cryptocurrency exchanges and wallet companies, including their anti-money laundering efforts.

But state licensing of money transmitters simply regulates the behavior of market actors (cryptocurrency traders and custodians), not the market itself (cryptocurrency). Thus, state money transmission licenses provide no controls over the volume and value of currencies—crypto or fiat—and the resulting economic stability. The potential magnitude of Libra as a global currency, and the accompanying systemic risks, finally brought that obvious truth into sharp focus for Congress and federal financial regulators alike.

For many in Congress, it seemingly boils down to this: federal law must now take seriously the broad implications of blockchain technology and cryptocurrency and regulate them responsibly. As with all complex legislative efforts, the project will require a careful balancing – here, between promoting technological innovation and mitigating financial risk. Any other path cannot be trusted.