



United States Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

July 1, 2019

Re: Facebook Digital Currency, Data Privacy

Dear Chairman Crapo and Ranking Member Brown:

Consumer Reports¹ thanks the Committee for calling a hearing this month examining Facebook's proposed digital currency. We have grave concerns about the launch of the Libra cryptocurrency. The Libra proposal is fraught with problems, and raises concerns about competition and market concentration, monetary policy, compliance with Know Your Customer and Anti-Money Laundering rules, and other critical issues. In this letter, we focus on two issues of direct concern to consumers: the lack of consumer protections for cryptocurrency and Facebook's inability to be a trusted steward of user data. Specifically, the US lacks a strong legal framework to ensure consumer protections and marketplace integrity for cryptocurrency, and Facebook's long track record of poor privacy practices and repeated illegal actions call into question their ability to lead this effort, even if temporarily.

The United States has no clear legal or regulatory framework in place for cryptocurrency. At both the state and federal levels there are different, and in some cases conflicting, approaches. For federal tax purposes, the Internal Revenue Service treats cryptocurrency transactions as property.² The Commodities Futures Trading Commission has indicated that at

¹ Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports works for pro-consumer policies in the areas of financial services and marketplace practices, antitrust and competition policy, privacy and data security, food and product safety, telecommunications and technology, travel, and other consumer issues in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

² Internal Revenue Service Notice 2014-21, available at <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

least some cryptocurrencies as commodities.³ The Securities and Exchange Commission has indicated that at least some digital assets are securities.⁴ States have taken varied approaches, with New York standing up a new regimen to license cryptocurrency businesses⁵, and Wyoming essentially exempting most cryptocurrency and cryptocurrency technology—known as blockchain—companies from oversight.⁶

The varied federal and state approaches leave consumers vulnerable to the many risks of cryptocurrencies today. Scams⁷ and fraud⁸ are rampant. Hacking of wallets and exchanges, where virtual currencies are stored, is common.⁹ Cryptocurrency value is volatile¹⁰, and even stable coins—those tied to real world commodities or fiat currencies as the Libra coin supposedly will be—have proved untrustworthy.¹¹ The New York Attorney General and others have documented worrying practices by cryptocurrency exchanges, where consumers exchange dollars for cryptocurrencies, and where consumers will trade Libra per the white

³ CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets, U.S. Commodity Futures Trading Comm'n (Jan. 4, 2018), https://www.cftc.gov/sites/default/files/idc/groups/public/@customerprotection/documents/file/background_er_virtualcurrency01.pdf.

⁴ In April, the SEC issued guidance on when an initial coin offering (ICO), or the offer, sale or distribution of digital assets qualifies as a security: <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>. This is in addition to earlier statements by SEC staff that indicate the the SEC considers some digital assets securities. See for example: SEC Chairman Jay Clayton, Statement on Cryptocurrencies and Initial Coin Offerings: <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11> and SEC Divisions of Enforcement and Trading and Markets, Public Statement on Potentially Unlawful Online Platforms for Trading Digital Assets: <https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading>.

⁵ 23 NYCRR 200.1 - 22.

⁶ Gregory Barber, *The Newest Haven for Cryptocurrency Companies? Wyoming*, Wired (June 13, 2019), <https://www.wired.com/story/newest-haven-cryptocurrency-companies-wyoming/>.

⁷ Olivia Solon, *Bitcoin, titcoin, ponzicoins: jokes and scams fuel a cryptocurrency gold rush*, The Guardian (Feb. 2, 2018), <https://www.theguardian.com/technology/2018/feb/02/bitcoin-banana-coin-prodeum-cryptocurrencies>.

⁸ Shane Shifflett and Coulter Jones, *Buyer Beware: Hundreds of Bitcoin Wannabes Show Hallmarks of Fraud*, A Wall Street Journal analysis of 1,450 cryptocurrency offerings reveals rampant plagiarism, identity theft and promises of improbable returns, (May 17, 2018), <https://www.wsj.com/articles/buyer-beware-hundreds-of-bitcoin-wannabes-show-hallmarks-of-fraud-1526573115>.

⁹ Kate Rooney, *\$1.1 billion in cryptocurrency has been stolen this year, and it was apparently easy to do*, CNBC (June 7, 2018), <https://www.cnbc.com/2018/06/07/1-point-1b-in-cryptocurrency-was-stolen-this-year-and-it-was-easy-to-do.html>.

¹⁰ See for example the value of bitcoin: on Jan. 1, 2019 one bitcoin was worth \$3,715.56, on June 1, 2019, one bitcoin was worth \$8,588.48. In 2018, the value of one bitcoin fell from \$13,337.62 on January 1, 2018 to \$7,518.33 on June 1, 2018. All valuations from <https://www.coindesk.com/price/bitcoin>.

¹¹ See, e.g., issues with the Tether stable coin <http://fortune.com/2019/04/25/bitfinex-tether-bitcoin/> and the Dai: <https://www.forbes.com/sites/jasonbloomberg/2018/11/25/bernie-madoff-move-over-stablecoins-have-you-beat/>.

paper.¹² According to the AG's report, exchanges do little to stop abusive trading activity,¹³ and costs of transacting may be unclear.¹⁴

The potential financial losses for consumers holding, transacting or trading Libra could be unlimited. As yet, there is no federal deposit insurance for cryptocurrency. In updating Regulation E, the implementing rules for the Electronic Funds Transfer Act, the Consumer Financial Protection Bureau declined to opine on whether Reg E applies to virtual currency wallets. Therefore, it is unclear whether consumers have error resolution rights or limits on losses under law. In the event of hacking, fraud or mistake consumers could be left to fend for themselves.

Facebook has repeatedly abused consumer trust, and shown itself unable to meaningfully police itself. It is difficult to imagine how Libra will be different. In the Libra white paper, Facebook promises to keep Facebook data and financial data separate. Facebook made similar promises about not using WhatsApp data for ad targeting, only to reverse course within a couple of years.¹⁵ Despite complaints from advocacy groups, the Federal Trade Commission demonstrated that it is not prepared to enforce these sorts of pre-transaction representations, and as a result, Facebook experienced no consequences for breaking its promises to its users. Facebook also promised to use users' phone numbers solely for security purposes, yet the company actually used this information to better deliver targeted advertisements.¹⁶ And these are only two examples of how Facebook has broken consumer trust. Moreover, the initial Libra privacy policy reserves the right to collect and share data for unbounded "limited purposes," without any condition of necessity or proportionality—and many of the exemplary rationales are quite broad.¹⁷ And finally Facebook indicates that it will share and merge consumer data "with consent," but, unfortunately, Facebook has a pretty broad view of what constitutes consent, as they have a well-documented history of using aggressive and misleading interfaces to get users to share data they otherwise would not.

¹² According to the Official Libra Whitepaper: "Libra is designed to be a stable digital cryptocurrency that will be fully backed by a reserve of real assets — the Libra Reserve — and supported by a competitive network of exchanges buying and selling Libra."

<https://libra.org/en-US/white-paper/#the-libra-currency-and-reserve> at 3.

¹³ Office of the New York State Attorney General, Virtual Markets Integrity Initiatives Report (Sept. 18, 2018), https://ag.ny.gov/sites/default/files/vmii_report.pdf at 7.

¹⁴ *Id.* at 13.

¹⁵ Natasha Lomas, *Whatsapp to Share User Data with Facebook for Ad Targeting*, TechCrunch (Aug. 25, 2016),

<https://techcrunch.com/2016/08/25/whatsapp-to-share-user-data-with-facebook-for-ad-targeting-heres-how-to-opt-out/>.

¹⁶ Kate Conger, *Facebook Turned Its Two-Factor Security 'Feature' Into the Worst Kind of Spam*, Gizmodo (Feb 14, 2018),

<https://gizmodo.com/facebook-turned-its-two-factor-security-feature-into-th-1823006334>.

¹⁷ Calibra: Customer Commitment,

https://scontent-lga3-1.xx.fbcdn.net/v/t39.2365-6/65083631_355528488499253_8415273665234468864_n.pdf?_nc_cat=106&_nc_ht=scontent-lga3-1.xx&oh=f03571d858835b89643784ce8cfa3e75&oe=5DBFB7C3.

We applaud the Committee for acting quickly to hold hearings. If we can be of assistance to you or Committee staff, please do not hesitate to contact us.

Sincerely,



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Director, Consumer Privacy and Technology Policy



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