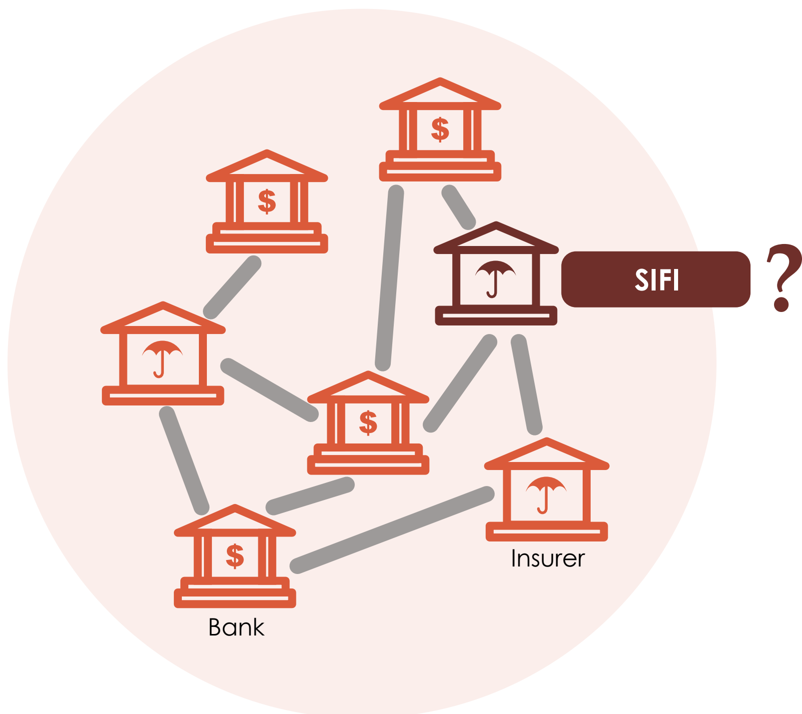
Kramer Levin

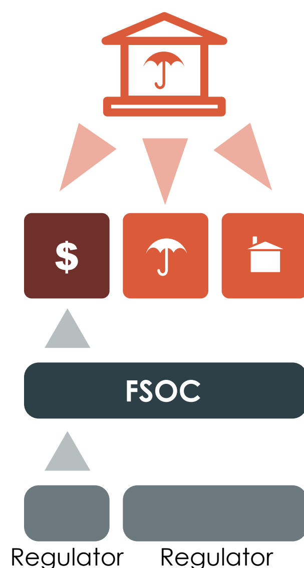
Rethinking systemic risk

The Dodd-Frank Wall Street reforms created the Financial Stability Oversight Council to designate nonbank financial firms as "systemically important financial institutions" (SIFI). Now a recent Treasury Department report recommends placing a greater emphasis on specific activities rather than on designated institutions.



It's not about only the institution

"It is difficult to predict with precision the impact that the failure of any nonbank financial company will have on financial stability," states the report, calling SIFI designation "**a blunt instrument** for addressing potential risks to financial stability."



Activities and products matter too

The Treasury recommends adoption of a three-step process to assess potential risk:

1. Review potential risks to financial stability from activities and products.
2. If potential risk is identified, work with relevant regulators to address the risk.
3. If a company could pose a risk to financial stability, consider designation only after consultation with relevant regulators.

Other recommendations:

- Strengthening the **analytic rigor** of the determination analyses.
- Amending the **consolidated assets threshold** applied at stage one of the determinations process in order to "more appropriately tailor" the process to assess a firm's risk.
- Improving **engagement and transparency** during the process, including engagement with the entities under review and their primary regulators, as well as with the public.
- Providing a clear **"off ramp"** for designated entities to achieve rescission of their SIFI status.

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