

USG Equity in the Critical Minerals Sector

Webinar on U.S. government equity and equity-linked investments in the Critical Minerals sectors

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We will discuss:

- The policy shift that has led to a recent surge in U.S government equity investments in the critical minerals sector, including key transactions
- The logic of using equity and equity-linked instruments in lieu of debt
- The toolkit, including direct equity, warrants, convertible preferred equity and convertible notes
- Generalized examples of governance rights and economics during the life of the investment
- Generalized examples of planned exit mechanisms and remedies

Policy Shift: Focus on Critical Minerals

- **What are Critical Minerals?**
 - Commodities essential for modern technology and defense and hence to U.S. economic and national security (e.g., rare earths, graphite, lithium)
 - Supply chains vulnerable to disruption (e.g., dominated by non-allied countries)
 - Cut-back or absence would have significant consequences
- **What is not a Critical Mineral?**
 - Non-scarce U.S. commodities (e.g., iron ore)

Policy Shift: Equity as one piece of a larger strategy

- Policy shift: To advance national security, defense readiness, grid resilience, job creation, and advanced manufacturing, the U.S. government is taking various steps that include:
 - Project Vault: a \$12 billion plan to boost strategic stockpiling
 - Bilateral pricing frameworks with allied countries (e.g., Australia and Japan)
 - A proposed preferential trading zone open to US allies and partners
 - Potential tariff exposure to protect domestic producers
 - Heightened CFIUS scrutiny to mitigate non-US control
 - Government grants and loans
 - **Equity investments in private companies** (including conversion of existing grants and debt investments into equity)
- Federal equity capital – which used to be primarily reserved for bailouts during a financial crisis – is now a planned complement to the larger strategy.
- Various agencies are investing, including DoW, DOE, Commerce, Treasury, and DFC. Some describe the development as the introduction of a de facto U.S. sovereign wealth fund.
- Are the right incentives in place?
- Equity toolkit: Agencies invest via, among other instruments, direct equity, warrants, convertible preferred equity and convertible notes.

Key Public Equity Transactions



Intel Corporation (9.9% USG Stake)

Dpt of Commerce *warrants* and *direct equity*



Vulcan Elements (\$1.4B USG partnership)

Includes DoW *warrants* and Dpt of Commerce *direct equity* to enhance rare earth magnet manufacturing (Benson, North Carolina)



MP Materials Corp. (15% USG Stake)

DoW *convertible preferred stock* + *warrants* for rare earth alloys essential for EVs and other products (Mountain Pass, California)



Lithium Americas Corp. (5% USG Stake)

DoE warrants for Thacker Pass lithium mine project (Nevada)



Syrah Resources Ltd. (Size Not Public)

DFC proposed *convertible notes* structure in an Australian publicly listed company (indirectly owns Mozambique graphite mine and Louisiana processing)

Why Equity and Not Debt?

Deliberate financial and policy logic behind equity deployment



Upside Participation

Equity enables the government to share in upside, whereas debt is capped at principal plus interest. Successful projects could be outsized returns for the US taxpayer



Better Risk Alignment

In development-stage mining projects with uncertain cash flows and price volatility, equity is more patient in nurturing an investment to success than a maturing obligation.



Signaling Mechanism

Federal equity participation reduces perceived policy risk and attracts additional private capital, including from lenders sensitive to geopolitical exposure.



Incentive Alignment

Minority equity alongside other co-investors signals federal capital is tied to long-term project success rather than mere short-term gains.



Liability Management

Debt-to-equity displacement helps companies de-lever balance sheets and increases the prospect of long-term profitability. Less debt lowers default risk.



Control Rights

Equity is typically accompanied by a level of control not found in debt.

Equity has become an accepted complement where risk-sharing and strategic alignment justify participation beyond fixed returns.

The Equity Toolkit

Federal equity and equity-linked instruments

01



Direct Equity Investments

The department of commerce has made multiple direct equity investments pursuant to its CHIPS Act authority, including minority equity stakes in Intel and Vulcan Elements.

02



Convertible Notes

DFC 's proposed Syrah Resources structure also includes converting the balance of an existing loan to a convertible loan note ("CLN").

03



Convertible Preferred Equity

DoW invested in convertible preferred stock and warrants with MP Materials. Combines downside protection with upside participation — includes liquidation preferences, dividend features, and consent rights.

04



Warrants and Equity Kickers

DoE financing for Lithium Americas' Thacker Pass includes warrants at corporate and project levels. Provides contingent upside participation tied to credit support.

Case Study: Convertible Preferred Equity

- The size of the check and agency's need often have a strong influence on the substance of the terms.
- Companies benefit, among the prior reasons identified, because they can raise significant amounts of capital to support operations and growth initiatives in a patient manner without a requirement to pay back dividends or return capital.
- The agencies not only price in economics, but increasingly use these investments to gain powerful governance / control rights during the life of an investment

Convertible Preferred Equity is popular because it is a flexible instrument that allows for tailored negotiations

Governance Rights

Protections during the life of the investment

- **During the life of the investment, agency protections can include:**
 - **Voting rights** with the common stock on an as-converted basis (except as specified in the charter or as required by law)
 - **Veto rights** over various major management decisions, such as:
 - E.g., Liquidation, Merger, Sale, IPO of the Company
 - Amendment of the charter or by-laws
 - Issuance of equity securities senior to or pari passu with the Preferred Stock
 - Incurrence of debt over a specified threshold
 - Repurchase or redemption of shares or payment of dividends
 - **Board designation and election rights** with respect to one or two directors
 - **Board observer rights** in some cases
 - **Information and inspection rights** to monitor the investment and day-to-day managers
 - **Preemptive rights** to maintain economic and control position in the Company
 - **Transfer restrictions:** Restrictions on transfers to foreign persons, particularly jurisdictions of concern

Economic Rights

Economics typically include:

- **Liquidation preference:** preferential distribution upon a company's liquidation or upon major events
 - Typically equals the original investment amount (sometimes with an accruing dividend)
 - Sometimes is a multiple (e.g., 1.5-2x)
- After payment of the liquidation preference on all preferred, proceeds may be distributed either to:
 - only holders of Common Stock ("**non-participating preferred**"); or
 - the holders of Common Stock and Preferred Stock on a pro rata, as converted basis ("**participating preferred**"), though distributions to holders of Preferred Stock may be capped at a return threshold.
- **Right to convert to Common Stock:** Exercised only if the expected value of Common Stock exceeds expected value of Preferred Stock.
 - Not all preferred is convertible. Non-convertible is sometimes paired with a warrant to capture upside capture upside.
- **Dividends** at a stated percentage "if, as and when" declared by the Board, the assumption being that dividends will not be declared and paid until liquidation or redemption of the Preferred Stock.
 - Dividends can be **non-cumulative** (i.e., no right to receive dividend if not declared) or **cumulative** (i.e., they accrue if missed and ultimately add to the liquidation preference).
- **Anti-Dilution Adjustments**
- **Price Protection**

Planned Exit Mechanisms

- **Exit rights include:**

- **Registration rights** provide liquidity to investors post-IPO by registering the sale of common shares (following conversion) with the SEC, including:
 - **S-1 demand rights:** a specified percentage of holders may require the Company to register shares on Form S-1 after IPO or after a certain date if no IPO has occurred
 - **S-3 demand rights:** following S-3 eligibility, an expedited short-form registration may be used for demand rights
 - **Piggyback rights:** holders can include shares in a Company-initiated offering, subject to the Company's priority to sell newly issued shares first
- **Deemed liquidation events** — change-of-control mergers, sales of substantially all assets, and other change-of-control transactions — trigger payment of the liquidation preference unless a requisite percentage of the preferred stock elects otherwise
- **Drag-along rights** allow large holders to force smaller holders to join in a secondary block sale or to vote in favor of a merger or change-of-control transaction
- **Tag-along rights** allow smaller holders to “tag along” to a large holder's planned sale. Agencies may want an exception for other shareholders tagging along to their sales in some cases (e.g., when the agency needs to exit for a policy reason).
- **Forced Sale Rights** typical put into place a sales process led by a company hired investment bank
- **Mandatory or elective redemption** is a put right to the Company that only will be effective if the Company has the cash to repay or can raise the cash through financing, asset sales or other means.
- **Generic Transfer Rights** allow agency-initiated resales, subject to compliance with securities law exemptions or registration.

Remedies

- **Consequences for failing to comply may include:**

- **Dividend ratchet:** an increase to the stated rate of a mandatory cumulative dividend
- **Springing board rights:** ability to elect a majority of the board, gain observer rights, and/or gain super-voting rights to alter the balance of power
 - Quorum and notice are also key to monitoring
- **Springing protective provisions:** additional investor veto rights over operations
 - E.g., a veto over any use of funds other than paying back the investor
- **Springing affirmative rights:** e.g., empowering investors to conduct a process to sell or IPO the company
- **Contingency asset pools:** asset pools with value in excess of the liquidation preference, set aside and sold after a period upon a failure to redeem
- **Junior equity injections:** junior holders may be required to inject cash at a subordinated level to cure financial ratios and prevent harsher consequences
- **Transfers void ab initio**
- **Specific performance or injunctions**

Preferred Stock: Limits to Adding “Teeth”

Statutory Limits:

There is a common law prohibition on dividends and redemptions when a corporation is or would be rendered insolvent on account of such dividend or redemption of shares which legally limits payments of this nature.

The rights of preferred investors are subordinate to the rights of creditors. Until debts are paid in full, preferred investors are not entitled to any part of the corporate assets.

Contractual Limits:

Diligence on the corporate's indebtedness and other material contracts may reveal contractual prohibitions on mandatory dividends and share redemptions, breach of which could lead to acceleration of senior obligations.



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- Jason maintains a broad capital markets practice.
- He advises investors with respect to bespoke capital solutions, including preferred equity, convertible notes and warrants.
- He advise issuers, underwriters and others on registered and exempt offerings of securities across industries, including critical minerals, real estate/REITs, mortgage and specialty finance, financial services, data centers, energy, automotive and aviation.
- He advises issuers, underwriters, investors and other parties in capital-raising and liability management transactions, including IPOs, ATMs, follow-on common and preferred stock offerings, convertible and exchangeable notes offerings, investment-grade and high-yield debt offerings, debt tender and exchange offers.
- He also assists domestic and foreign private issuers with ongoing securities law compliance requirements, SEC public reporting obligations, listing standards of the major US stock exchanges and other governance matters.

Additional resources

- Mayer Brown, [Critical Minerals: “Project Vault” and the New US Critical Minerals Playbook](#), March 12, 2026 and
- Mayer Brown, [US Government Equity and Equity-Linked Investments in Critical Minerals](#), April 15, 2026



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