

The Implications of Government Ownership in Private Firms

J.W. Verret

jayverret@gmail.com

Assistant Professor, George Mason Law School
Senior Scholar, Mercatus Center Financial Markets Working
Group

Preferred Shares under TARP

- \$250 billion to banks through the Capital Purchase Program
- \$100 billion to Citigroup, AIG, GMAC, GM, & Chrysler
- In exchange, Treasury gets preferred shares and warrants for common equity

Voting Rights

- Preferred Shares are non-voting
- Treasury nominates Preferred Directors if TARP participants miss a dividend
- Merger Approval
- Proxy Access
- Warrants in Common Equity
- Corporate Governance mandates

Comparable Examples

- Tension between Constituent Directors and Shareholder Wealth Maximization is inevitable
- Europe's Golden Shares
- CalPers

Shareholder Litigation

- Treasury may be pressured to become a lead plaintiff
- May amount to billions in recovery annually, which would double the size of U.S. securities class action recovery
- State law (Delaware) shareholder litigation rights
- Conflicts
- May require clarification of Section 3(c) and 10b-5

Shareholder Responsibilities

- Control Person Liability
- Insider Trading Laws
- Federal government has immunity from both
- Capital Markets would be damaged by federal abuse of that sovereignty