



FEATURES AND COMMENTARY

Universal Card, T. Rowe, Helped Rice Brothers Win at EQT

The Rice Brothers got some high profile, public help in their efforts to take control of the board and C-Suite of the natural gas producer, in a blockbuster win resembling Starboard's 2014 victory at Darden Restaurants.

By Ronald Orol

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The Rice Brothers on Wednesday succeeded overwhelmingly in their effort to take control of the board of natural gas producer **EQT Corp.** in (EQT) a rare big proxy fight win in a battle that went the distance and one that will result in the installation of dissident Toby Rice as CEO.

"This is a stunning victory for the Rice Brothers," said Kai Liekefett, partner at **Sidley Austin LLP**. "Successful change-of-control proxy fights are extraordinarily rare because they equate to a hostile takeover without the payment of a control premium. The EQT vote result is particularly noteworthy because boards have prevailed in most proxy contests in 2019."



The victors, who control a 3% stake, had some high-profile public supporters, which observers contend gave them a significant boost in their campaign - the two largest active shareholders, T. Rowe Price and D.E. Shaw, with 10% and 5% stakes respectively, both came out in advance of the contest in support of the dissidents.

Also, Institutional Shareholders Services, the more important of the two leading proxy advisers, urged investors to back all the dissident candidates. (Glass Lewis, the other principal proxy adviser, backed the incumbents). Finally, the Rice Brothers secured the use of a universal proxy card ballot for the contest - the first in the U.S. involving a control slate of directors - a tactical move that likely paid dividends with institutional investors eager for more flexibility in picking and choosing among incumbent and dissident directors.

The Rice Brothers cofounded Rice Energy, which was sold to EQT in 2017 for \$6.7 billion. The duo has been waging a boardroom battle at the \$4.2 billion market capitalization company based on the premise that one of the Brothers, Toby Rice, is better equipped to manage the company than its current CEO, Robert McNally. EQT's share price has been mostly on a downward trajectory since the deal closed.

In a statement, the Rice Team said that, based on preliminary voting results at the EQT meeting, shareholders have elected all seven Rice-backed director candidates as well as five incumbent directors and that all 12 directors received more than 80% of the votes cast at the annual meeting.

One person familiar with the situation noted that over 90% of votes cast backed three of the dissident directors, while **Daniel Rice**, who was nominated by both sides, received nearly 100%.

The contest represents the largest change of control proxy fight to go the distance in the U.S. this year and it is comparable to **Starboard Value's** Jeff Smith and his overwhelming win in 2014 taking control of the entire board of Olive Garden owner **Darden Restaurants Inc.** (DRI) in a campaign that went the distance and was considered the most consequential insurgency of that year. However, the percentage of shares backing the dissidents in this contest may be unprecedented for a change of control contest of this size.

According to Proxy Insight, the EQT battle was the second largest contest overall to go the distance in 2019 so far, considering market capitalization, after Texas Pacific Land Trust, which was a fight to install one dissident trustee on the company's three-person board.

TOP FIVE PROXY FIGHTS IN THE U.S. IN 2019

by Market Capitalization*

Company/Ticker	Market Cap	Date of Meeting	Proponent	Winner
Texas Pacific Land Trust (TPL)	6.205B	6/06/19	SoftVest LP	Unknown
EQT Corp. (EQT)	4.102B	7/10/19	Toby Z. Rice	Dissident
Mack-Cali Realty Corp. (CLI)	2.163B	6/12/19	Bow Street LLC	Dissident
PDC Energy Inc. (PDCE)	2.148B	5/29/19	Kimmeridge Energy Management Co.	Management
Gannett Co. (GCI)	954.524M	5/16/19	MNG Enterprises Inc.	Management

Source: **Proxy Insight** * Market Cap taken from Bloomberg on July 10, 2019.

One proxy solicitor not affiliated with the situation suggested that it was extremely unusual for the two biggest active managers, T. Rowe Price and D.E. Shaw, to come out publicly in support of a dissident change-of-control contest in advance of a fight. He added that **ISS** support could represent between 10% and 15% of votes automatically and itself acts like "like a big shareholder."

"Public support from large active managers can be extremely significant to the outcome of a contested election," said **Okapi Partners** founder **Bruce Goldfarb**. "An investor who actively buys and sells shares and chooses to express its opinion about who should run the board can influence the views of other investors."

Another proxy solicitor noted that big investors generally are hesitant to come out publicly in advance of a proxy contest. "So it is unusual," he said. "T. Rowe price is no shrinking violet. They aren't afraid to talk and when they feel strongly about something they know how to pull the levers."

The dissidents also likely scored a boost among institutional investors by securing the use of a universal proxy card that included incumbent and dissident director candidates on one card. Institutional investors for years have been pushing for such cards, but for the most part, companies and activists have not agreed to use them. A traditional contest would have had seven dissident candidates appearing on one card and twelve incumbent directors on another.

The two sides engaged in months of squabbles over the technical details of the contest. At one point in March, EQT required that the dissident director nominees consent to be named on EQT's proxy card, along with the company's incumbent director candidates. However, EQT did not consent to allow the Rice Brothers to put incumbent director nominees onto the dissident card. Following a Rice Brothers lawsuit, the two sides eventually reached an agreement to allow for universal cards with incumbent and dissident candidates.

The universal proxy card likely helped the dissidents score some institutional investor support. However, most investors probably voted based on who they thought would do a better job running the company.

"In this case, that [universal proxy] card may not have impacted the outcome other than as a demonstration of confidence by the dissident of its willingness to put its case forth among all nominees," said Okapi's Goldfarb.

Before the contest was over, lawsuits and boardroom shuffles began. In May, EQT replaced three long-tenured directors with new board nominees, in a move that suggested that the company was worried about losing the contest. Also in May, the Rice Brothers canceled a lawsuit targeting EQT after the natural gas producer revised a so-called "proxy put" provision in its creditor agreement that otherwise could have required up to \$800 million in debt come due upon a boardroom change of control.

Olshan Frome Wolosky Partners Steve Wolosky and **Elizabeth Gonzalez-Sussman** advised the Rice Brothers in their EQT contest. Olshan partners Wolosky, Andrew Freedman and Meagan Reda advised Starboard in their 2014 contest at Darden Restaurants.

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