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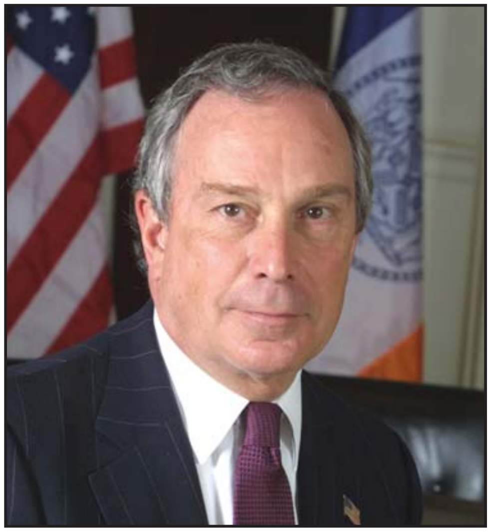

Mayor Michael R. Bloomberg

Senator Charles E. Schumer

Bloomberg/Schumer Report: A Focus On Talent

The Committee of Corporate General Counsel ("Committee") of the ABA Business Law Section presented a program on March 16 that included a panel ("ABA Panel") entitled "New Commissions, New Recommendations: U.S. Capital Markets and Corporate Reforms." The panel discussed three reports containing recommendations to improve the competitiveness of U.S. capital markets and the institutions that use them. These reports are (1) Report and Recommendations of the Commission on the Regulation of U.S. Capital Markets in the 21st Century established by the U.S. Chamber of Commerce ("Chamber Report"), (2) Interim Report of the Committee on Capital Markets Regulation ("CCMR Report") and (3) Sustaining New York's and the U.S.' Global Financial Services Leadership ("Bloomberg/Schumer Report").

*The Editor interviews **Greg Wilson**, President, Greg Wilson Consulting. He previously was a partner in McKinsey & Company's Washington, D.C. office specializing in strategic issues in the financial services industry. McKinsey had been awarded a contract through the New York Economic Development Corporation to help Mayor Bloomberg and Senator Schumer come up with a proposal to enhance the competitiveness of New York City as a financial center. Prior to joining McKinsey in 1989, Mr. Wilson served as deputy assistant secretary for financial institutions policy at the U.S. Treasury Department during the U.S savings and loan crisis.*

In our May issue, we published interviews of participants in the Chamber Report. See the interviews of Christine Edwards on the front cover and of Richard H. Murray and Michael Ryan on Page 5 of that issue.

The views of the interviewees do not necessarily represent the views of the organizations responsible for the reports.

Editor: Greg, tell us about the Bloomberg/Schumer Report's approach.

Wilson: One of the great things about the three reports is that, although they have a common goal, they take different approaches. The way in which the three reports complement and overlap with each other enhances their effectiveness.

We decided to conduct interviews with 40 CEOs from top U.S. and foreign companies doing business in the U.S. to get an idea of the factors that drive their financial decisions. We also did an Internet-based survey of senior business leaders who have the ability to move business around the world. This was a unique approach for examining the differences between New York and London capital markets and financial services industries. Those interviews and that survey served as a basis for the major recommendations contained in the Report.

Editor: What are the key differences between the Bloomberg/Schumer Report and the Chamber and the CCMR Reports?

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Wilson: Our Report included a focus on the role that talent plays and the need to get the best people into our financial services sector world. Many of the people we spoke with indicated that there is a problem in getting the people they need into the U.S. on a timely basis. For instance, one of our interviewees indicated that his company had to hire 15 Ph.D.s in mathematics from Russia and China. He decided to place those individuals in London instead of New York because of the difficulties in bringing talented workers into the U.S. This dramatically illustrates how our immigration laws disadvantage U.S. markets.

Editor: Did the Report suggest solutions for the immigration problem?

Wilson: Yes. It recommended that Congress re-examine and eliminate some of the barriers that prevent talented workers from coming to work in the U.S. This includes increasing the annual cap on H-1B visas and tying the number of visas to a market-based mechanism. We suggested that provision be made for an automatic increase in the number of H-1B visas available in the year following a year where the visa cap is reached.

After foreign students finish their studies in the U.S., there is a considerable lag time between graduation and the time when a visa is granted if they decide to work here. During that transition period, those potential workers must either wait outside the U.S. until their visas are

Please turn to page 25

Bloomberg/Schumer

Continued from page 11

updated or seek employment in another country. The Report recommends that the Department of Homeland Security be granted authority to extend their student visas until they are granted a formal H-1B visa.

The current standards for granting business travelers B-1visas gives immigration officials considerable discretion. That means that the treatment these travelers receive varies. Travelers have a hard time determining how they will be received when they enter the country. The Report recommends that a set of guidelines be prepared governing how immigration officials are to deal with business travelers. This would ensure more uniform treatment and result in a more expeditious granting of visas.

Editor: Were there any recommendations for increasing the number of talented individuals from within the U.S.?

Wilson: We recommended that educational institutions in New York City offer courses dedicated to building financial markets competency. New York already has excellent graduate programs but there is a need for more programs in financial engineering and global capital markets. The idea would be to develop either a consortium of universities or a new educational center targeted to providing such programs.

Editor: I understand that the Report also commented on the current U.S. regulatory structure.

Wilson: In the U.S., the regulatory system is overly complex with many federal and state agencies having overlapping jurisdictions. We commented on the difference between our system and the system in the UK. We have to be sensitive to what the UK is doing and how it affects our ability to compete. If we had a welcoming, open regulatory environment with high standards, our capital markets would be more attractive.

Many of those who commented expressed a great preference for the London regulatory structure where the Financial Services Authority (FSA) is the only regulator overseeing the financial services industry. The FSA uses a principles-based approach in which regulations are implemented and enforced based on a set of broad governing principles similar to a code of conduct.

We recommended the creation of a national commission on financial market competitiveness that would tackle these structural issues and come back with recommendations that could be considered to ensure that our regulatory structure not only maintains high standards but is responsive to market needs and is cost effective.

We recommended that the Secretary of the Treasury and the Presidential Working Group on Financial Markets should work together to develop a shared vision for the importance and strategic direction of our financial sector with a view to assuring its global competitiveness. With that vision in place, they can develop a common set of principles that establish norms for the regulation of financial markets and provide guidance to financial institutions operating in the U.S. We are waiting to see what recommendations Secretary Paulson makes.

Editor: How does the Report address the complexity in U.S. regulation for the financial services industry?

Wilson: The Report reviewed the basic operating charters and holding company structures for institutions doing business in the U.S. These companies face regulatory scrutiny from various agencies at the state and national level for the different business units they operate. When companies receive competing opinions on a particular issue, it often takes months to resolve the dispute. That means that companies need to wait considerably more time before going forward with a new product. This reduces the competitiveness of U.S. financial institutions when compared with foreign institutions.

In addition, banking institutions are required to operate under a series of different national and federal banking licenses that have not been examined or changed in decades. For instance, the national banking charter dates back to 1863 and while the succeeding comptrollers have tried to modernize it, there has not been a major look or overhaul of that statute. In the Report we recommend that regulators and Congress assess and modernize these charters so U.S. companies remain competitive. While those who responded to our survey and those we interviewed preferred the UK's single regulator model, we realize that we are not yet ready to move towards that system in the U.S. Therefore, we asked that each federal and state regulator examine their charters and regulations and modify them to take into account today's global financial industry.

Like the banking industry, the insurance industry has to comply with 50 different sets of regulations from each state. There is currently no federal charter to unify these different charters. In the Report, we noted legislation introduced by Senators John Sununu of New Hampshire and Tim Johnson of South Dakota designed to provide an optional federal charter for insurance companies.

Editor: Does the Report cover the Basel II rules?

Wilson: Respondents to our inquiries noted a concern with the proposed implementation in the U.S. of the Basel II rules which were intended to provide a uniform international risk-based capital standard. While U.S. regulators would adopt the Basel II rules, they would also include additional requirements that would place U.S. financial institutions at a competitive disadvantage with respect to their foreign counterparts. For instance, U.S. banks would be required to maintain higher levels of capital and engage in more complex reporting than their international competitors.

Citigroup, JP Morgan Chase, Wachovia and Washington Mutual have joined together to suggest an alternative implementation regime for Basel II that would give banks a choice for meeting their risk-based capital requirements. These recommendations have been endorsed by the American Bankers Association, The Independent Community Bankers of America and the Financial Services Roundtable.

Editor: Does the Report address Sarbanes-Oxley?

Wilson: The problem with Sarbanes-Oxley has been the lack of guidance on how it should be implemented. We agree with the other two reports which support efforts by the SEC and PCAOB to make Sarbanes-Oxley implementation more efficient and cost effective. In addition we recommend changes to Sarbanes-Oxley so that small companies can opt out of the onerous requirements of the Act, provided they make a disclosure to shareholders. Furthermore, we believe that foreign companies should also be exempt from certain parts of Sarbanes-Oxley, as long as they are required to comply with SEC-approved foreign regulations.

The goal is to provide a well-balanced regulatory system that protects shareholders while remaining competitive with other foreign markets. The decline in the U.S. IPO market is an example of why these reforms should be considered. Even though the decline is due to a certain extent to the maturity of foreign markets, concerns about compliance with Sarbanes-Oxley and other U.S. regulations have also served to drive foreign enterprises away from the U.S. markets.

Editor: What recommendations does the Report make for New York?

Wilson: While it was necessary to address the national issues affecting the financial services industry, it was equally important for us to consider what New York has been doing to promote itself as a financial center. The Report recommends that New York City improve its processes for attracting and retaining businesses in the City. Respondents to our survey noted that senior leaders from other cities reached out to them on a consistent basis for assistance. That is not the case in New York. To address this concern we recommended that New York City develop a joint venture with the business community to more readily address these concerns. The partnership can also work to create a dialogue with Washington leaders.

Editor: Why should in-house counsel be concerned with these issues?

Wilson: The capital markets are the life blood of our economy. When you look at the figures, eight percent of the country's GDP is related directly to financial services and five percent of employment in the country is related to this sector. In-house counsel are working either directly with a financial services company or they are engaged with a financial services provider in some way. If our U.S. providers are globally disadvantaged, the reforms are important for their businesses and they need to know about them.

Furthermore, irrespective of their businesses, if they are listed or otherwise subject to the SEC regulations or are subject to securities class actions the proposed reforms will be of great benefit.

Editor: What do you see as the next steps to implement the recommendations in the Report?

Wilson: I believe that Senator Schumer will come up with legislation based on his recommendations. We should also pay close attention to Secretary Paulson's recommendations for regulatory structure change, accounting change, and legal and corporate governance changes.

The Chamber of Commerce has set up a Center to be a leading advocate for reform. The Center plans to take ideas from the three reports and encourage their implementation.