Cuomo, Would-Be Governor, Gets Tough When Foes Say No (Update1)

By Karen Freifeld

June 14 (Bloomberg) -- New York Attorney General Andrew Cuomo, the Democratic candidate for governor who has challenged legislators to join his plan to clean up state government, has a history of getting what he wants.

Quadrangle Group LLC, the New York-based money management firm co-founded by Steven Rattner, was among the latest to experience Cuomo’s style of conflict resolution. When Rattner declined to settle on Cuomo’s terms in the probe of his role in state pension fund corruption, the would-be governor made Rattner pay a price.

The settlement, publicly announced on April 15, included a statement by Quadrangle disavowing its former leader and asserting that Rattner’s conduct in gaining $100 million in fund business was “inappropriate, wrong and unethical.” The statement originated with Cuomo’s office, which required New York-based Quadrangle to make it in order to settle, according to two people familiar with the matter.

Voters have made Cuomo the frontrunner for governor in the latest polls, embracing such tough tactics, which some legal ethics experts have criticized.

“The public is interested in taking some action against people who seem to get away with everything -- the insurance industry, Wall Street and corrupt public officials,” said political consultant Hank Sheinkopf, who ran campaigns for former state Comptroller H. Carl McCall and Cuomo’s predecessor Eliot Spitzer, who later became governor. “Andrew Cuomo will be someone to be reckoned with.”

Cuomo Comment

Cuomo spokesman John Milgrim declined to comment on the Rattner probe because it’s still active. Andy Merrill, a spokesman for Quadrangle, which didn’t admit wrongdoing, declined to comment. Rattner, who resigned during Cuomo’s probe as the Obama administration’s chief adviser on restructuring the auto industry, declined to comment.

Until this year, Quadrangle handled the finances of New York Mayor Michael Bloomberg, whom Rattner supported through his chairmanship of Democrats for Bloomberg during the 2005 re-election campaign. Bloomberg is the majority owner of Bloomberg LP, the parent of Bloomberg News.

Spitzer, 51, also a Democrat, had a record of similar tactics that produced high public approval ratings. When he became governor in 2007, Spitzer promised to be a “steamroller” to get things done. He declined to comment on any comparison of him and Cuomo.

Spitzer’s style worked until his uncompromising advocacy of unpopular measures, such as drivers’ licenses for illegal immigrants, put him at loggerheads with Albany lawmakers. A call-girl scandal forced him to resign in March 2008.

Cuomo Signs

Cuomo, 52, has given signs he too might get pushy if elected governor. In a May 22 speech announcing his candidacy, he called on statehouse candidates to say during the campaign whether, if elected, they will support his plan to fix a government system he called a “national disgrace.”
“We want to know how the candidates for the state legislature are going to vote on key issues and we want to know now,” he said in the speech.

Cuomo’s plan, the “New NY Agenda,” calls for full disclosure of legislators’ income, a new campaign-finance law, a reduction in lobbyists’ influence, a freeze on state spending, a cap on taxes, a reduction in the number of state agencies and a constitutional convention to rewrite laws the legislature had refused to address.

About 40 of the 684 lawyers in the attorney general’s office focus on investor and consumer matters, work that has generated most of the favorable reviews of him. When Cuomo took office in 2007, he told this group to find situations that hurt citizens and fix them, Milgrim said. Their marching orders were to seek quick, industrywide settlements, he said.

Public Negotiations

To get deals, Cuomo sometimes negotiates in public, putting a spotlight on both the danger to investors or consumers as well as the parties allegedly causing it, rather than probing the matter in private as federal prosecutors or regulators often do.

That’s what happened with Facebook Inc. In Cuomo’s first year in office, his investigators set up an undercover operation to see how safe the Palo Alto, California-based social networking company’s website was for minors. After posing as underage girls, Cuomo’s investigators made complaints, pretending to be mothers of girls, about actual communications sent by sexual predators.

Getting what his office regarded as an insufficient response, Cuomo sent a publicly disclosed letter to Facebook Chief Executive Officer Mark Zuckerberg on Sept. 24, 2007, saying the company might be violating New York’s business law by misrepresenting how safe facebook.com was.

Slow Response

Cuomo cited evidence that underage users “are targeted by sexual predators,” that there is “widespread pornographic and obscene content” on Facebook and that the response to complaints was “slow, sporadic and inconsistent.”

He attached a subpoena demanding information on Facebook’s security and complaint-resolution policies. Three weeks later, the Palo Alto, California-based company settled, promising to look into complaints within 24 hours and to hire an examiner to monitor compliance with the two-year accord.

Orin Snyder, outside counsel for Facebook, said he preferred the letter and subpoena to a lawsuit.

“A letter and a subpoena is an olive branch to engage in dialog,” he said. “A lawsuit is a punch in the nose.”

SLM Corp., the largest U.S. student-loan company, was resisting Cuomo’s efforts to end what he called sweetheart arrangements between lenders and schools that resulted in borrower overcharges. Cuomo got on the phone around midnight with W. Neil Eggleston, a Washington lawyer representing the company, which is known as Sallie Mae, according to Milgrim.

‘Your Options’

“These are your options,” Cuomo told Eggleston, according to Milgrim. “One is do the deal and we will praise you tomorrow and you will be seen as an industry leader for new, good conduct. Option B is, if you don’t sign on, you will not be seen as a leader for reform, we will come back around to you later, and ultimately we could end up in litigation.”

Sallie Mae took option A without admitting wrongdoing.

Martha Holler, a spokeswoman for Sallie Mae, declined to comment. Eggleston didn’t return calls for comment.

Cuomo’s approach to settlements has supporters and detractors.

“I felt the Cuomo administration was aggressive but fair,” said New York attorney Dan Horwitz, who said he had handled several cases before the office and wound up co-hosting a fundraiser for Cuomo in April.

Good Hires

Zachary Carter, a former U.S. Attorney in Brooklyn who was on Cuomo’s transition team for attorney general, also praised Cuomo’s work, pointing out that he hired a staff of talented lawyers, many of them former federal prosecutors.
Bennett Gershman, an authority on prosecutorial misconduct at Pace Law School in White Plains, New York, questioned the Quadrangle statement on Rattner.

“I don’t know how these gratuitous condemnations serve any purpose except to smear the nonsettling party,” he said in an interview. “I think it’s improper.”

Milgrim declined to comment on Gershman’s view.

Cuomo was aided in his crackdown on corporate wrongdoing by New York’s powerful securities-fraud law, the Martin Act, as was Spitzer before him. Since taking office in 2007, Cuomo has used the act to launch investigations of UBS AG, Citigroup Inc. and other underwriters of auction-rate securities, Fannie Mae and Freddie Mac over mortgage loans they purchased, and alleged fraud in connection with Bank of America Corp.’s acquisition of Merrill Lynch & Co.

No Proof

The statute, which permits Cuomo to sue or charge people criminally and doesn’t require proof of fraudulent intent, gives him leverage to pressure people and companies to sign up for settlements he proposes. The Martin Act gives the attorney general the power to deny subpoenaed witnesses a transcript of their testimony before trial and to make subpoenas public.

Cuomo’s Martin Act powers are like those of federal prosecutors or regulators in the early stages of an investigation, Milgrim said.

Charles Schwab Corp., the subject of an investigation by Cuomo over auction-rate securities, said in a letter made public in August that his office took “one-sided testimony” from witnesses and that company lawyers weren’t allowed to ask questions or get a transcript.

Cuomo alleged that Schwab sold the securities as if they were cash-like investments when in fact they were so risky that the market in them eventually froze. Cuomo announced his intent to sue the company in July. The probe remains unresolved.

‘Enormous Pressure’

“There is enormous pressure on any entity that is publicly traded or that depends on its reputation to accrue capital, to resolve these kinds of cases,” said Faith Gay, a lawyer with Quinn Emanuel Urquhart & Sullivan LLP who represents Schwab.

Cuomo sued San Francisco-based Schwab after the company said it wouldn’t agree to a “prepackaged resolution that unfairly punishes it” for events over which it had no control.

“Even if you have a leg to stand on, you may decide it’s just not worth it,” Gay said in an interview.

Contesting Cuomo’s allegations was in the best interest of shareholders and the company’s reputation, Schwab said in July.

Schwab’s comments on the fraud suit Cuomo filed against it are “not surprising,” Milgrim said. “Beyond that, the lawsuit and the court record speaks for itself,” he said.

Produced Changes

Cuomo’s approach has produced changes in business practices. His probe of the $85 billion student-loan industry resulted in adoption of a code of conduct by 22 lenders and 28 colleges and universities. The code obliges them to cut financial ties and forbid payments and perks from lenders seeking business.

His investigation of how health insurers reimburse patients for out-of-network services resulted in an industry payment of almost $100 million to fund a nonprofit database to determine what is “reasonable and customary” for such services.

Cuomo’s pension fund probe uncovered a national network of politically connected persons who made millions of dollars arranging for private-equity firms to invest public pension-fund money. Fifteen firms have agreed to a Cuomo code of conduct banning so-called placement agents and limiting campaign contributions to those with the power to assign investment business.

Six people have pleaded guilty to criminal charges. Hank Morris, the former political consultant Cuomo claims is at the center of the case, has pleaded not guilty and awaits trial.
Latest Poll

Cuomo was rated favorably by 59 percent of registered voters questioned by Siena College in a poll released today and had a 2-to-1 lead over his Republican opponents. A Marist poll in May showed an approval rating of 64 percent.

His vigorous management of good and bad publicity about him may have contributed to that result. Cuomo regularly uses teleconferences for major announcements rather than press conferences, allowing him more control over any off-message questions through offline screening. His staff has also called outside experts quoted in news reports to disagree with their comments, including Gershman following a Bloomberg News story that included his remarks.

Those who called had a right to make their views known, Milgrim said.

Cuomo has taken a more conciliatory approach when it was necessary to reach a consensus to enact legislation, a crucial skill for any governor. He helped secure passage of a law that permits voters to propose consolidating inefficient local governments, a change the state legislature and local officials resisted for two decades, Milgrim said.

Sold It Well

“He sold it very well, and it reflected political skills on his part,” said E.J. McMahon, an Albany-based fiscal analyst with the Manhattan Institute, a business-funded, conservative policy research group.

Similarly, Cuomo got Albany lawmakers to approve changes on school-loan laws to reflect his code of conduct and testified in support of a federal law to do the same.

Cuomo has had a lifetime to learn the ways of New York politics, according to Doug Muzzio, professor of public affairs at Baruch College in New York. The son of three-term former Governor Mario Cuomo, he served as his father’s campaign manager and top aide. He was also briefly a prosecutor and served as U.S. Secretary of Housing and Urban Development under President Bill Clinton. He made a failed run for governor in 2002.

Muzzio said that Cuomo’s background makes it less likely he’ll will run into the same obstacles that slowed Spitzer’s “steamroller.”

“Andrew has an understanding and a feel for politics that Spitzer did not have,” he said.

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