WE ASKED, HE ANSWERED

Mr. Ajay Tyagi, Chairman, SEBI, in conversation with Mr. M. Damodaran, Chairperson, Excellence Enablers

It is normal for regulators to ask questions, and for persons from the regulated universe to respond. In an inversion of the natural order, we had the privilege of asking questions that Chairman, SEBI responded to with candour and conviction. The one-hour conversation, with the ultimate Gatekeeper of Governance, took place on a day that was intended to be the first day of our 2-day annual Corporate Governance Summit.

In his opening remarks, Chairman, SEBI pointed to the disconnect between the economies that are doing badly and the securities markets that seem to be more than holding their own. Increased liquidity and low interest rates have been major contributory factors. Market volatility has reduced since March, 2020. What is most satisfying is that the number of retail investors has increased significantly, as evidenced by a growth of 130% in the new Demat accounts that have been opened. FPI net investment till 25th November, 2020 is the highest ever during a month.

Touching on SEBI as an institution, Mr. Tyagi said that it has matured significantly in the more than three decades of its existence. Work has expanded to new areas such as commodity derivatives, new products such as REITs, InvITs, commodity options and municipal bonds, as also new participants such as AIFs. There is increasing reliance on technology, especially, to improve supervisory capabilities, including monitoring and enforcement. Initiatives such as regulatory and innovation sandbox have been introduced. SEBI has acquired private cloud, and planned a data lake project to augment analytical capability with tools such as AI/ML, deep learning, pattern recognition etc. The developmental role is sought to be reinforced by improving the quality of processes, especially through enhanced discussions and public consultation.

SEBI also has a fairly busy agenda for the immediate future. Adequate importance is being given to further development and reform of the corporate bond market, and also to facilitate the issuance of lower rated papers. Secondary market volume also needs to increase. A major reform which would be required would be the integration of the G-Secs and corporate bond markets, which have similar operational architecture, but divergent sets of regulations, ownership, governance and compliance. Other initiatives include the Request For Quote (RFQ) platform for better price discovery and transparency. Mutual Funds have been mandated to use this platform. IRDAI has also asked insurers to undertake at least 10% of their total secondary markets trade in RFQ platforms. In addition, a limited purpose clearing corporation for repo in corporate bonds, and a backstop facility for corporate bonds is also being contemplated.

Responding to questions on different aspects of the functioning of SEBI, Mr. Tyagi explained what was possible and what could be difficult of implementation.

1. Investor education – While commenting on the augmentation of the corpus of Investor Protection Funds and their having been deployed for more than 1 lakh investor education programmes, he agreed that more needs to be done in this direction. Financial literacy and education programmes have been, and continue to be, organised on a regular basis, and Exchanges and Depositories are also making serious efforts in this direction. A new initiative has been the SMARTs programme, where training has been provided, through the NISM, for the first batch of participants. Post their training, they would be some of the persons through whom investor awareness would be promoted.

2. Complaints of regulatory overload – As more and more regulations come into being, the regulated universe responds with the complaint that there is a regulatory overload that has costs and time implications, and impacts the smooth conduct of business. Responding to the issue whether regulations are excessive and too prescriptive, he mentioned that SEBI has been quite consultative in its approach, as compared to several other regulators,

and has sought to involve a wider range of persons in the process of giving shape to new regulations. In order to protect the interest of investors, SEBI has to be somewhat prescriptive, and cannot go entirely by principles-based regulations. As for the likely problem of "one size fits all" regulation, he mentioned that there are some relaxations for SMEs, but there cannot be across the board dilution since investor interest is involved.

3. Capacity building in regulatory organisations – On the question of improving regulatory capacity, by growing the organisation in terms of numbers and enhanced skillsets, he responded with the observation that the workforce in SEBI is doing excellent work. However, given the significant expansion in the market, it is necessary to augment resources. He stressed that it is necessary for regulators to remain upskilled at all times, and to be compensated appropriately. In order to do more, and better, with the existing complement of staff, SEBI has sent a large number of officers, from various operational departments, for training abroad in data analytics. These officers are also periodically rotated within the organisation. One significant development has been that a shadow book of brokers has been built to study disclosures and to identify early warning signals.

4. Role of Trustees of Mutual Funds – In the context of a recent episode in the Mutual Funds industry, Mr. Tyagi was asked whether Trustees of Mutual Funds are measuring up to their responsibility as first level regulators. He agreed that much more needs to be done in this area. SEBI has already put in place some measures to strengthen the Trustees. These include making available a dedicated officer to the Trustees to help them in their functions, the power to ask for independent audit, and the power to take expert opinion from outside professionals.

5. Informal guidance mechanism – Responding to a question whether the informal guidance system, which exists at present, should be replaced by an Authority for Advanced Rulings, Mr. Tyagi mentioned that the informal guidance system was adopted several years ago in line with the US SEC guidelines. Given the wide variety of products and activities that SEBI deals with, an Advanced Ruling mechanism, on the lines of Income Tax, which is somewhat unidimensional, might be impracticable. He however agreed that the informal guidance given by any department of SEBI should be honoured by the entire organisation, and departmental differences in interpretation should not lead to problems for guidance seekers.

6. Cryptocurrency – Since cryptocurrency is increasingly in the news, he was asked as to how it should be regulated and which organisation should regulate cryptocurrency. He responded with the initial observation that the nature of regulation would depend on whether it is being treated as legal tender or as an asset class. A Committee formed by the Government had gone into it in great detail, and while no solution has yet emerged, the experience of other jurisdictions, such as Japan and Switzerland, are being studied to identify what course of action would best meet the requirements of the Indian situation.

7. Unified regulator for the financial sector – According to Mr. Tyagi, the concept of a unified regulator is theoretically very sound, but its implementation would face several challenges. While some of the recommendations of the Financial Sector Legislative Reforms Commission (FSLRC) have already been accepted, the remaining will take time to be implemented, having regard to the complexity involved.

8. SEBI's quasi-judicial orders – There is an oft expressed view that SEBI's quasi-judicial orders, more often than not, do not survive Appellate scrutiny. Dispelling such apprehensions, Mr. Tyagi mentioned that in the current year, 92% of the appeals made to the Securities Appellate Tribunal against SEBI orders have been rejected. Nevertheless, he believes that improvement in quality of orders needs constant attention. Senior functionaries are being tasked with this responsibility. In addition, one Whole-Time Member and the Chairman himself periodically reviews orders that have not survived Appellate scrutiny.

How does the head of SEBI relax? At the end of a very engaging conversation, this was one question the SEBI Chairman appeared to duck. Except for stating that he occasionally took his dog for a walk, he offered no peek into his methods of relaxation. There is perhaps a very loaded message here for regulated entities. If he does not relax, you cannot be lax.