

generate “precise numbers” will add to their burdens, says **Krista Zipfel**, CEO/president of **Advisor Solutions Group** in Newport Beach, Calif. “For some of the smaller firms, the reality is they have not adopted technology to the level ... that I think the SEC thinks the world has,” she continues.

“The question is what is the SEC going to do with all of this data,” says Marshall. “I do think there’s a risk that the SEC will be overwhelmed with information that they don’t have the ability to absorb.”

Zipfel believes the new question about the use of outsourced CCOs will clearly be used by OCIE to select exam targets. “It will increase their risk score” in the eyes of OCIE when firms flag that they rely on an outsourced CCO, she states.

Marshall adds that he believes the disclosure provision will reduce the number of advisers that turn to outsourced CCOs, and that’s not good. He regards the option as ideal for some firms with few employees and resources.

“The bar will be raised” on the quality of outsourced CCO firms because of the new Form ADV question, believes **Debra Brown**, president of **Self Audit, Inc.**, a Beverly Farms, Mass.-firm that provides outsourced CCO services.

Feeling left out

“It’s disappointing,” says **Mark Elovitz**, a partner with **Schulte Roth & Zabel** in New York, that the agency didn’t accept his comments and expand the umbrella registration concept to non-U.S.-based advisers and exempt-reporting advisers. Also, he’s baffled as to why the agency didn’t blanket SMA data reporting with confidentiality protections.

“It seems odd that Form PF is confidential” but not Form ADV SMAs reporting, says Elovitz.



Conversely, **Investment Adviser Association** President/CEO **Karen Barr** is “very pleased” that the SEC accepted the IAA’s suggestion that the threshold for reporting borrowings and derivatives be hiked to \$500 million in AUM.

Books and records

John Ruark, a lawyer with **Funkhouser Vegosen**

(Form ADV Reactions, continued on page 4)

A mix of pleasure and disappointment percolates after new SEC Form ADV rule

Reactions to the SEC’s [final rule](#)  revising Form ADV and the books and records rule include gratitude that the agency listened to some industry comments, although some feel disappointment that their input failed to persuade a last-minute change ([IA Watch](#) , Sept. 1, 2016).

“I don’t think this [rule] is earth-shattering. This is not going to transform the industry,” says **Richard Marshall**, a partner with **Katten** in New York.

But it could challenge smaller firms. “What’s good for a **J.P. Morgan** isn’t necessarily good for [a small] asset manager,” says **Adrian Day**, president, **Adrian Day Asset Management** (\$102M in AUM) in Annapolis, Md. While he’ll cope with this latest rule, it’s really “the accumulative burden of all of these things,” adds Day. “When you add it all up for a small firm, you are inevitably taking time away from managing clients’ portfolios and servicing clients.”


Data demands

Take the Item 5 data that will be required on separately managed accounts. Expecting smaller advisers to

Form ADV Reactions (Continued from page 3)

Liebman in Chicago, wishes the SEC had taken a different stance on the books and records rule change. While most advisers keep records to support their performance marketing, some older relationships date back to before computers. “That was a much different world than the world we have now,” he says. In these cases, firms won’t be able to use such performance numbers.

The upshot of the books and records changes is easy to translate, contends Elovitz: “It means that the SEC continues to be serious about its scrutiny of performance advertising.”

Brown believes it wasn’t coincidental that the Form ADV rule appeared on the same day the SEC announced a series of performance advertising enforcement actions tied to the **F-Squared** case ([IA Watch](#) , Sept. 1, 2016). At least the rules change will give the agency law to cite rather than to engage in “regulation through enforcement,” she adds.

The Form ADV rule’s estimate of how many hours it will take firms to comply (16 hours) is a gross under-estimation, Brown asserts. ■
