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Performance Testing Guide for Private Fund Managers

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While regulators' expectations of legal and compliance officers are heightened across the board during the pandemic, one consistent area of focus has been the internal reviews of fund performance carried out by a manager's compliance team. Concerns exist that distributed workplaces, such as those resulting from the Covid-19 quarantines, could become environments ripe for the transmission of material non-public information ("MNPI"). These concerns were expressed in March by the Co-Directors of the Division of Enforcement of the U.S. Securities and Exchange Commission, who, in a statement regarding how the Covid-19 pandemic could impact market integrity, reiterated that "...investment advisers, and other registrants must comply with policies and procedures that are designed to prevent the misuse of material nonpublic information." In this article, associate Tarik Shah and former Schulte lawyer Brian Daly outline potential regulatory inquiries and the related compliance measures fund managers should consider.

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