

## [Blogs](#)

March 31, 2025

Leveling the Playing Field? Developing Discovery Strategies in CFTC Civil Enforcement Actions



The Commodity Futures Trading Commission's Division of Enforcement wields immense power in civil enforcement actions.

It often seeks financial sanctions, including hefty financial penalties, and injunctive relief that can strip individuals of their professional licenses and bar them from trading in the derivatives markets. It also enjoys information-gathering advantages: it can issue subpoenas, hold proffers, pay whistleblowers for assistance, and bolster its own investigative powers by working with other agencies.

While the CFTC engages in years-long fact gathering, its opponents may lack even the most basic information about the agency's investigation. Recent discovery and due process decisions, however, including the Supreme Court's decision in *SEC v. Jarkesy*, have equipped defendants with affirmative measures to obtain additional information from the CFTC. This article discusses three types of material that litigants may consider pursuing to achieve greater fact-gathering parity while litigating against the CFTC: (i) exculpatory/Brady material, (ii) internal agency material, and (iii) joint fact-gathering material.

\*\*This article was originally written and submitted by Shari Brandt and Colin Ceriello for this year's ABA Derivatives and Futures Law Committee Winter Meeting.

[Read the full article here](#)

**Authors**

**Explore more in**

