

# The CUSIP Case

## IPUG Briefing

**Tim Baker, CFA (tim@blueskythinking.io)**

Head of Fin Serv Practice, Expero

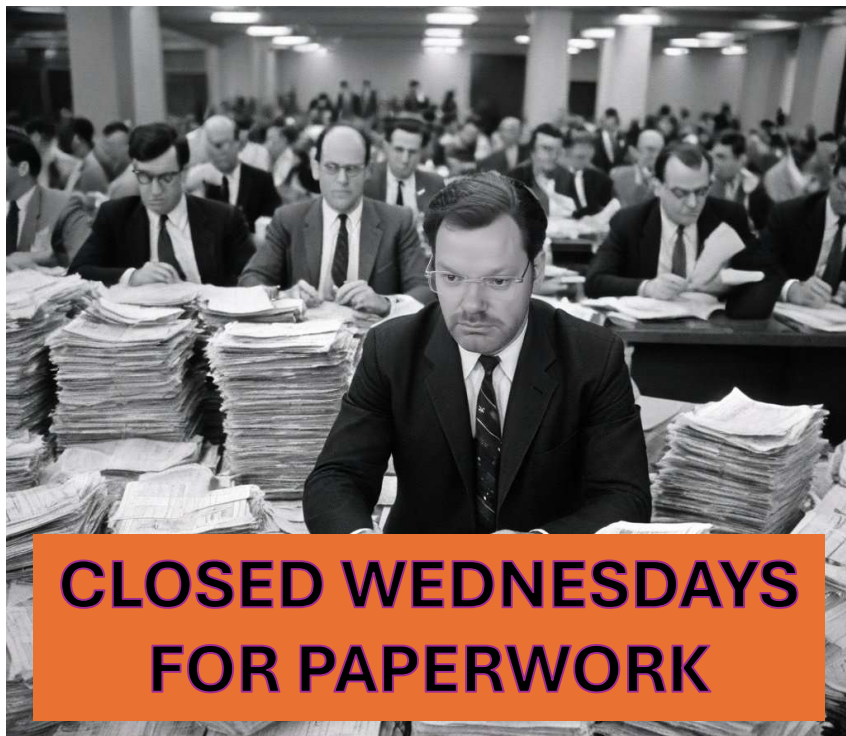
Founder, Blueskythinking

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# Agenda

- CUSIP: what is it
- How is it used
- Historical Perspective
- Sale by S&P to Factset
- The Class Action
- Timeline
- Discussion

# CUSIP Born Out of Necessity



## Original Mandate (1968):

- American Bankers Association (ABA) given the mandate to create
  - a universal numbering system, one that would give a unique number to every class of security still in circulation, and to every new security going forward;
  - the CUSIP number would be imprinted on all new stock certificates;
  - the CUSIP numbers ought to be “machine readable”



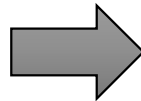
IHS Markit® +

**S&P Global**

Merger Announced: 30 November 2020



EC Approval : 22 October 2021



**FACTSET**

Factset successfully bids \$1.925bn for CGS: 27 December 2021

Blue-Sky thinking

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# What people were saying - publicly

**The CUSIP system is so broken!.....S&P had zero incentive to operate a decent service.**

The information superhighway requires content flow freely. For this **we need identifiers that are open and enabling**, not siloed and constraining the flow.

Now would be the perfect time for the regulators to demand a more open model facilitating innovation. (it could be a great blockchain use case) **It is a small, but critical piece of the markets infrastructure**, that is holding back many entrepreneurial modernization endeavors.

The CUSIP license **fee regime has far “overreached” in the imposition of fees** on advisers and funds,...

“What a deal. You charge somebody to issue a CUSIP and then when they use it, you say they have to pay a licensing fee. ... **Those who license CUSIP and pay for CUSIP hate them. It’s a red-hot hate**”. \*

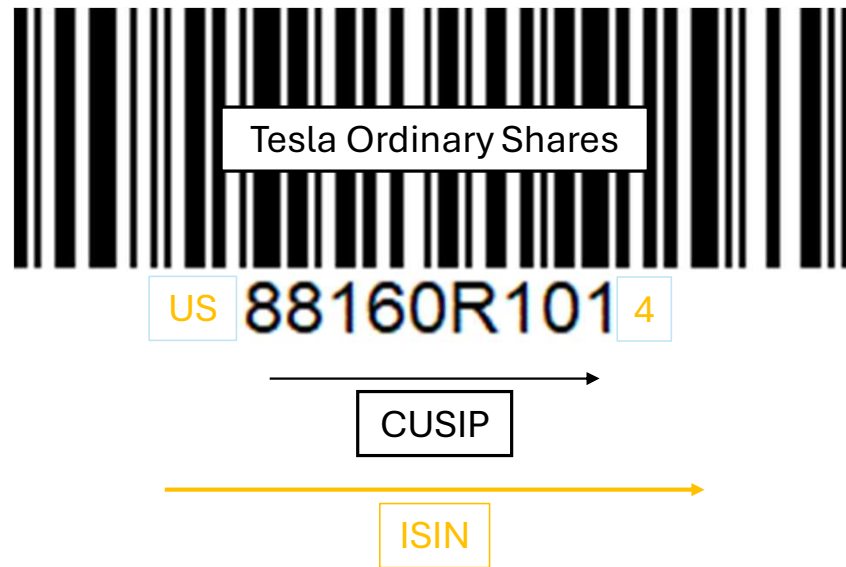
**CGS has been a PITA to the entire industry**, buy-side, sell-side, redistributor, or data owner. I remember when the CUSIP was on the front of every EDGAR document. How is it not already considered to be in the public domain?

Look at the **bonus schemes of ABA and CSG staff**

*Source: LinkedIn (public comments to Tim Baker post).*

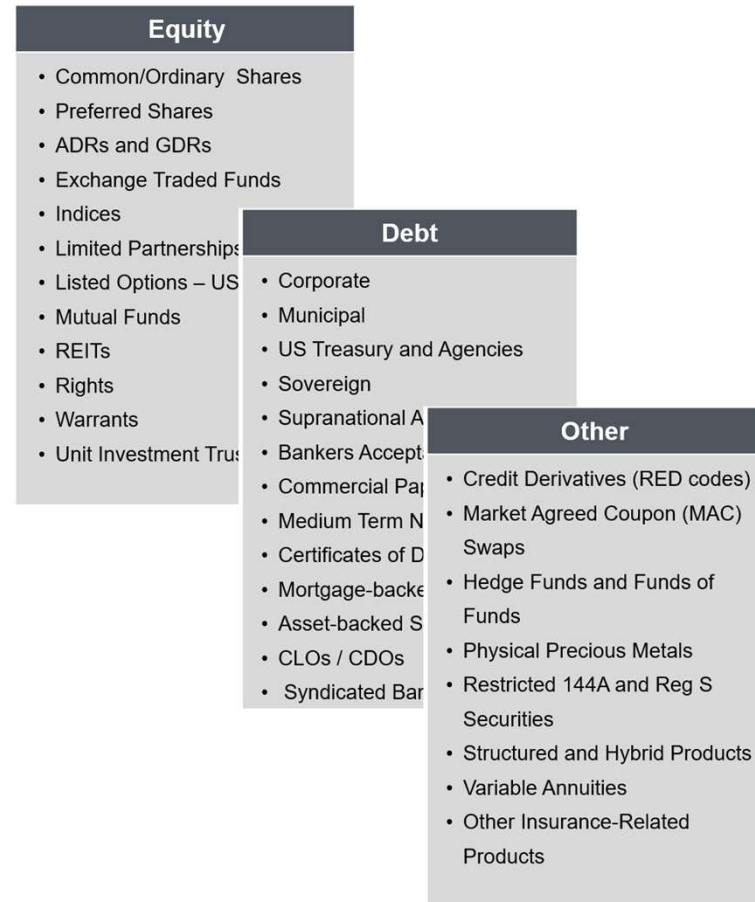
*\*Waters Technology. SEC Asset Management Advisory Committee Report and Recommendations on Regulatory Approach for Small Advisers and Funds November 1, 2021*

# CUSIP



# CUSIP business today

- **Geography**
  - CGS is the official numbering agency for the US & Canada + 35 other Caribbean and Central/South American Countries
  - US ISIN are built from the CUSIP (US+CUSIP+check digit)
  - CGS has responsibility for ISIN distribution in the US, as a member of the ANNA (Association of National Numbering Agencies)
- **Basic Reference Data**
  - Up to 60 fields (submitted by issuer / their bankers)
  - Public data
- **Asset Classes**
  - Spans Equity, Debt and Exotics
  - 30m issued, and 70k new issues per year
- **Expanded Use Cases**
  - Pre-trade, Post trade/reporting, analytics, quant
  - Used as a primary key for databases across the industry
  - The SEC frequently requires inclusion of CUSIP in filings (eg 13F Holdings filings)
- **Governance**
  - Industry-appointed, with dedicated SIFMA, DTCC and ABA seats



# Revenue/Licensing Model

- Issuer fees: \$200 per issue, 70k CUSIPs / year
- CUSIP data license
  - Price depends on number of CUSIPs, USE Cases, # of regions
  - Strict controls on redistribution
  - Enforcement: Audits, legal action, suspension of service
  - Europe: EU enforcement capped pricing there
- Revenues and costs
  - CGS Revenues: \$175m (source Factset)
  - Banks account for just 29% of revenues.
  - ABA: 2021 Revenue from “Royalties” - \$38.4m (source IRS form 990)

## Fee Calculator

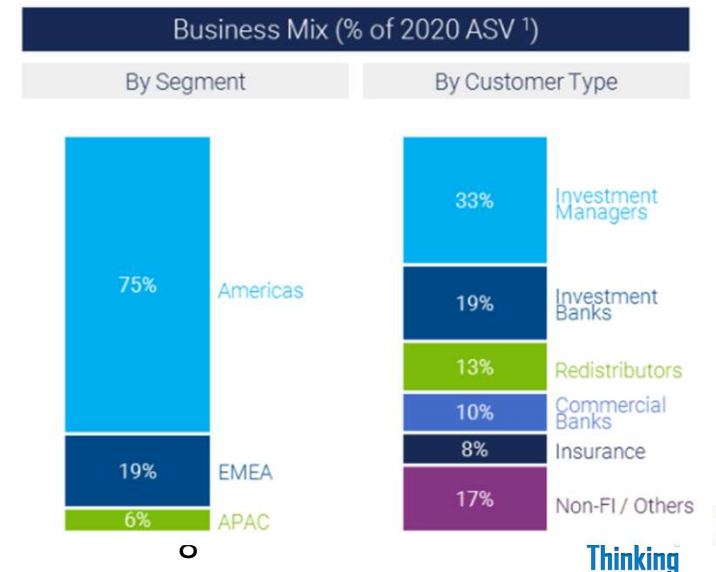
1. NUMBER OF CUSIP IDENTIFIERS: UP TO 5,000 SECURITIES

2. NUMBER OF LINES OF BUSINESS: 4 LINES OF BUSINESS

3. NUMBER OF REGIONS: 2 REGIONS

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Total \$U.S. **\$63,000**



# Factset

FACTSET

## Acquisition to significantly expand FactSet's critical role in the global capital markets



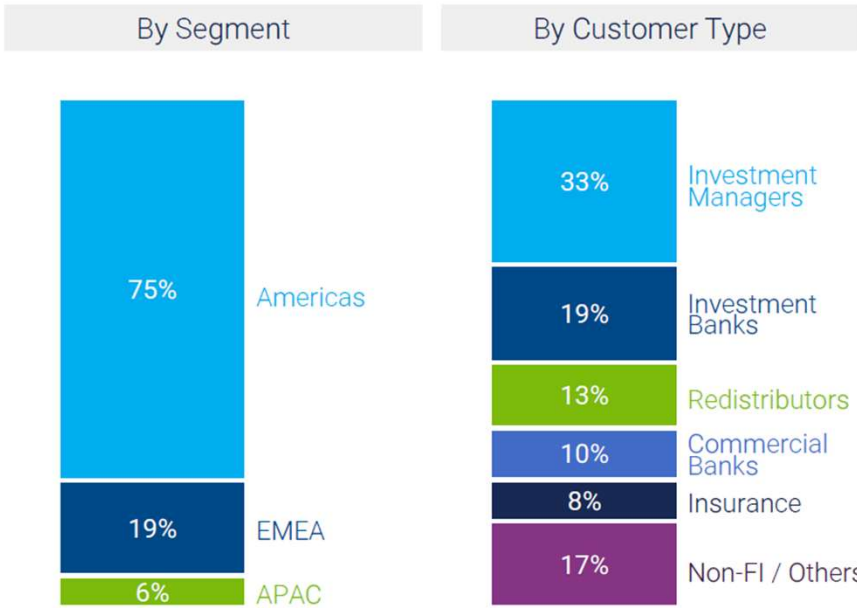
<sup>1</sup>. FactSet expects to receive a step up in tax basis resulting in an annual deduction over the next 15 years with an estimated tax benefit of approximately \$200 million on a present value basis.

CGS's financial profile features robust margins and consistent revenue growth rates

Summary Financial Metrics



Business Mix (% of 2020 ASV <sup>1</sup>)



1. Annual Subscription Value ("ASV").

Source: CGS

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# The Plaintiffs

HILDENE  
CAPITAL MANAGEMENT

 **DINOSAUR**  
FINANCIAL GROUP, LLC

SwissLife 

# The Defendants



vs

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**S&P Global**



# Court Filings

- I don't read all these docs – just some of them! ----->

Reports ▾ Utilities ▾ Help Log Out

**1:22-cv-01860-KPF** Dinosaur Financial Group LLC et al v. Defendants CUSIP Global Services et al  
 Katherine Polk Failla, presiding  
**Date filed:** 03/04/2022  
**Date of last filing:** 05/23/2024

## History

Doc. No.	Dates	Description
<a href="#">133</a>	Filed & Entered: 05/23/2024	Notice of Change of Address
<a href="#">132</a>	Filed & Entered: 02/20/2024	Notice of Appearance
<a href="#">131</a>	Filed: 01/22/2024 Entered: 01/23/2024	Order on Motion for Conference
<a href="#">130</a>	Filed & Entered: 01/19/2024	Response in Opposition to Motion
<a href="#">129</a>	Filed & Entered: 01/16/2024 Terminated: 01/22/2024	Motion for Conference
<a href="#">128</a>	Filed & Entered: 10/24/2023	Order
<a href="#">127</a>	Filed & Entered: 10/23/2023	Letter
<a href="#">123</a>	Filed & Entered: 10/17/2023	Order
<a href="#">124</a>	Filed & Entered: 10/17/2023	Stipulation and Order
<a href="#">125</a>	Filed & Entered: 10/17/2023	Protective Order
<a href="#">126</a>	Filed & Entered: 10/17/2023	Memo Endorsement
<a href="#">119</a>	Filed & Entered: 10/16/2023	Letter
<a href="#">120</a>	Filed & Entered: 10/16/2023	Proposed Protective Order
<a href="#">121</a>	Filed & Entered: 10/16/2023	Proposed Stipulation and Order
<a href="#">122</a>	Filed & Entered: 10/16/2023	Proposed Stipulation and Order
118	Filed & Entered: 09/21/2023	Order on Motion to Appear Pro Hac Vice

# Lawsuit

- The antitrust lawsuit against CUSIP Global Services, S&P Global, the American Bankers Association (ABA), and FactSet revolves around allegations of monopolistic practices and anti-competitive conduct concerning the use of CUSIP numbers, which are unique identifiers for financial instruments. Here's a summary of the accusations and a timeline of key events:

## Accusations:

- 1. Monopolistic Control:** The defendants are accused of abusing their monopoly power in the market for financial instruments identifiers—namely, CUSIP numbers. This includes engaging in restrictive practices that allegedly limit competition and maintain high fees unjustifiably.
- 2. Restrictive Licensing:** The lawsuit claims that the defendants conspired to force financial institutions and other data users to enter into onerous licensing agreements and pay inflated license fees directly to CUSIP Global Services, now controlled by FactSet, under threat of losing access to essential financial data.
- 3. Unfair Trade Practices:** Allegedly, the defendants made deceptive statements regarding their intellectual property rights over CUSIP numbers, which contributed to their ability to charge excessive fees, and to impose restrictive licensing requiring licensees to enforce the regime on the their customers. Furthermore, the complaint mentions that the defendants' actions violate both the Sherman Act, which prohibits monopolistic behaviors, and state consumer protection laws.

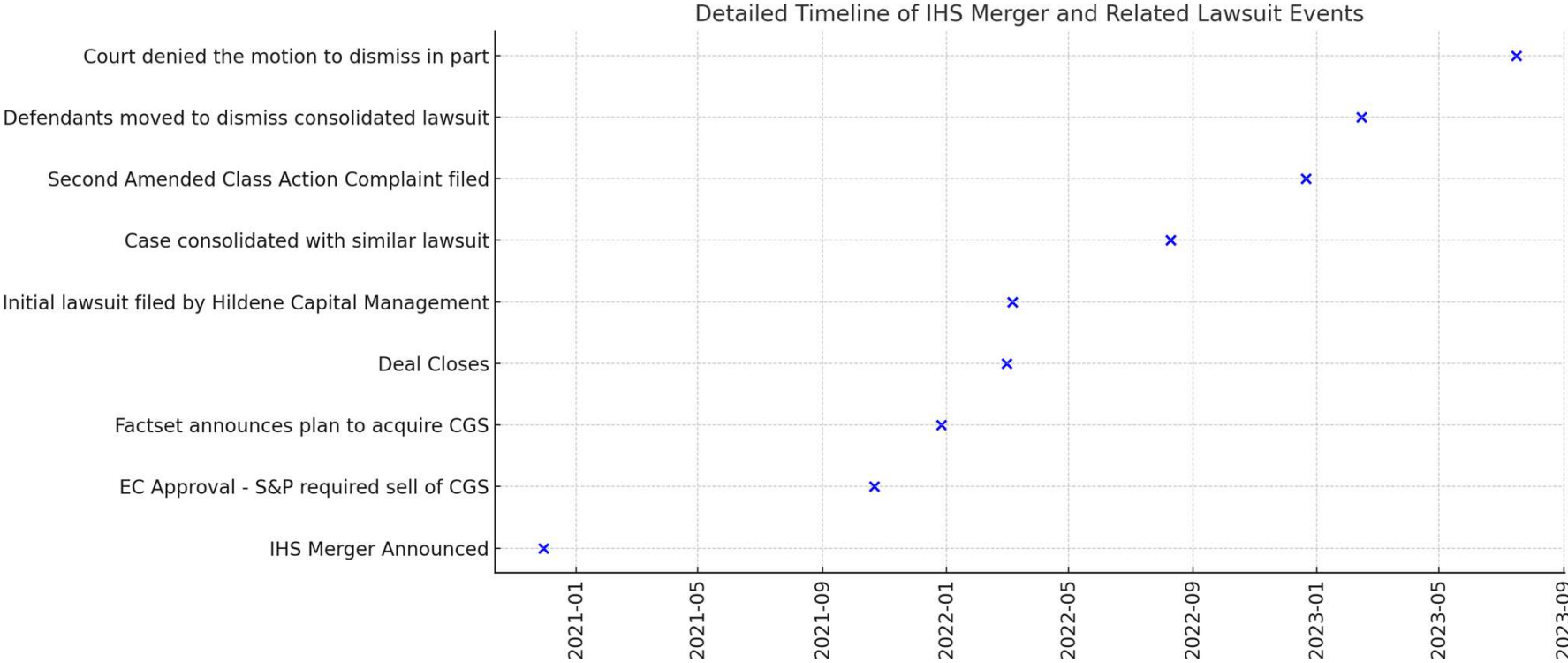
# The CUSIP Business Model

- **CGS** charges securities issuers a fee (usually about \$280 per CUSIP number) to obtain CUSIP numbers for its securities.
- **CGS** charges data providers (e.g., Bloomberg) licensing fees for using CUSIPs in its databases.
- **CGS** demands that data providers' end users, such as the Plaintiff, or entities that otherwise download CUSIP numbers as part of financial data for their own use ("data users"), enter their own subscription agreements with CGS under the threat of stripping the CUSIP numbers from their data feeds if the unilaterally determined licensing fee is not paid.

***Defendants, according to the complaint, have a clear interest in requiring that all data users use only the CUSIP identifier system, because, upon information and belief, the ABA retains 30% of CGS's licensing fees from all data users with the remainder kept by S&P (and now FactSet).***

Source: Kehoe Law Firm

# Timeline



# Playing hardball



**Latest Plaintiffs' Motion:** Sought a hearing regarding the defendant's refusal to produce documents related to the 2009 European Commission (EC) investigation involving CUSIP Global Services and the American Bankers Association.

- These documents might contradict the defendants' current stance that CUSIP numbers were not claimed to be copyrighted, which is central to the defense.

## **Defendants' Response:**

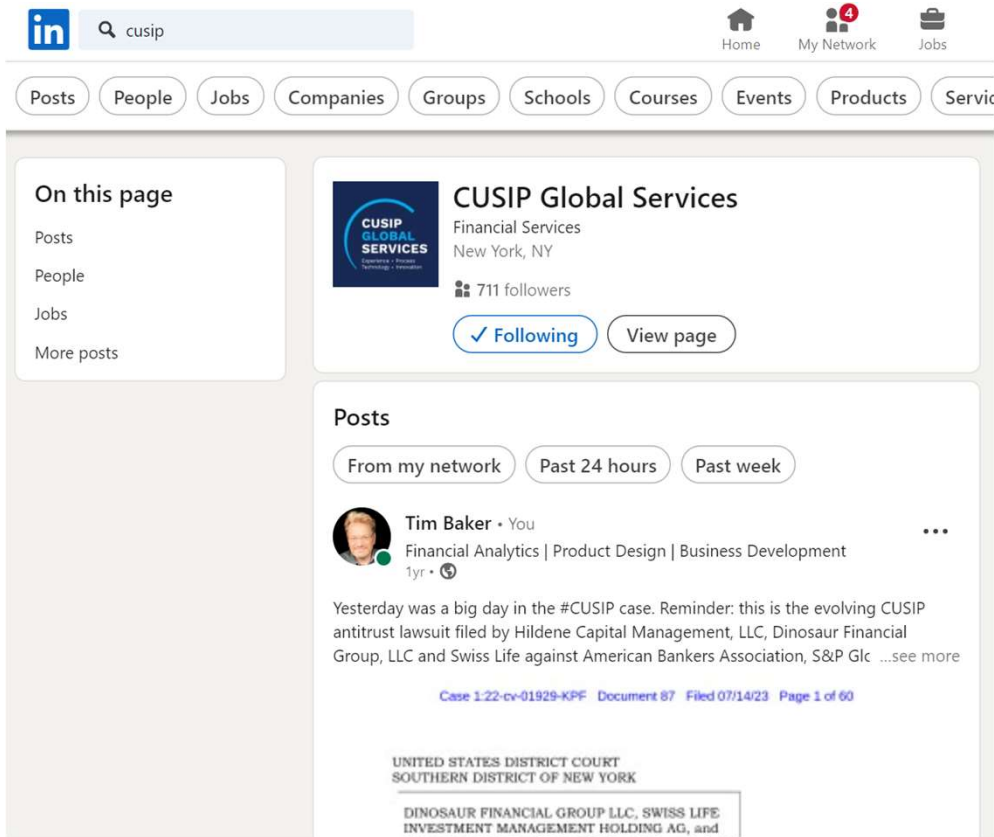
- Claimed that the EC standards are not applicable to U.S. antitrust laws, attempting to dismiss the relevance of the documents.

## **Court's Decision:**

- Judge Failla's Ruling: Partial victory for plaintiffs; court orders some documents to be produced, emphasizing the relevance of whether CUSIP numbers were considered copyrightable.
- Acknowledged FactSet's objections but dismissed them, citing the relevance over geographical copyright differences and time elapsed.
- Respected confidentiality per EC regulations, allowing withholding of documents under nondisclosure but requiring other relevant documents to be produced.

**Implications:** The resistance to document production raises questions about potential impacts on the defense strategy and possible settlement discussions.

# Staying Current:



The screenshot shows a LinkedIn profile for CUSIP Global Services. The profile header includes the company name, "Financial Services", and "New York, NY", along with 711 followers and a "Following" button. Below the header, a post by Tim Baker is visible, dated 1 year ago. The post text reads: "Yesterday was a big day in the #CUSIP case. Reminder: this is the evolving CUSIP antitrust lawsuit filed by Hildene Capital Management, LLC, Dinosaur Financial Group, LLC and Swiss Life against American Bankers Association, S&P Glc ...see more". Below the text is a link to a court document: "Case 1:22-cv-01929-KPF Document 87 Filed 07/14/23 Page 1 of 60". At the bottom of the post, a snippet of the court document is visible, showing "UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK" and "DINOSAUR FINANCIAL GROUP LLC, SWISS LIFE INVESTMENT MANAGEMENT HOLDING AG, and ...".

## As legal letters fly, Cusip licensing debate rolls on

Cusip Global Services' licensing agreements with third-party data providers sit at the heart of the antitrust case against itself and three others.



By Rebecca Natale  
[@rebnatale](#)  
06 Jun 2024

# Discussion

- The CUSIP is a critical piece of market infrastructure
- It is unregulated, although the SEC requires CUSIPs to be used for multiple filing types
- The Buyside is disproportionately burdened and so many just work around it.
- CGS is highly profitable
- Modern technology should mean that the service can be comfortably operated through the collection of issuer registration fees
- Competition and/or regulatory oversight should be introduced in order to improve the service to the industry.