

SEC Delivers Welcome Relief by Modernizing Equity Compensation Registration

October 20, 2026

On October 15, 2026, the Securities and Exchange Commission (SEC) issued several new and revised Corporation Finance Interpretations (CFIs) addressing various matters related to equity compensation registration and reporting. The CFIs represent welcome relief and signal SEC attention to and receptivity toward issuer concerns around historical SEC positions that complicated equity compensation securities law compliance. The CFIs are the result of engagement between the Joint Committee on Employee Benefits (JCEB) and the SEC, in which Cooley actively participated alongside peer firms.

Two particularly important new CFIs under Section 271 of the Securities Act Rules CFIs (Rule 701 – Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation) address historically problematic issues arising in the M&A and/or initial public offering (IPO) context.

Pre-IPO exemption to S-8 pipeline

New CFI 271.28 provides that, if prior to an IPO an issuer relied on an exemption from registration under the Securities Act (e.g., Rule 701, Regulation D or Section 4(a)(2)) to grant compensatory awards, the shares underlying those awards may be registered on Form S-8. This new position dramatically expands the ability of issuers to register shares issuable under pre-IPO awards and, in turn, facilitates grantees' ability to sell those shares following the IPO. Specifically, this new interpretation should eliminate many of the technical resale and stock plan platform issues that historically arose for restricted stock and restricted stock units (RSUs) granted within one year of an IPO or that vested upon an IPO, including the need in some cases to rely on a resale Form S-8.

Exemption covering acquired former service provider awards

New CFI 271.29 provides that, where an issuer acquires another entity and assumes equity awards previously issued by that target company, Form S-8 and Rule 701 are available to the acquiror not only with respect to **current** target service providers (as has always been the case) but also with respect to **former** service providers of target (i.e., grantees whose service terminated before the acquisition). This new position dramatically simplifies registration of awards held by former service providers – a process that has been a perennial source of consternation in the M&A context. Essentially the same relief is repeated in revised CFI 126.14 under the Securities Act Forms CFIs (Form S-8).

S-8 relief for pre-vest filing of restricted stock/RSUs

Another significant development is expansion of the existing relief for the timing of S-8 filings that previously applied only to stock options. Under prior guidance, most recently set out in a CFI under Section 126 of the Securities Act Forms CFIs (Form S-8), the SEC treated the filing of a Form S-8 in respect of a stock option as timely where the S-8 was filed before **exercise** of the option, regardless of the grant timing. CFI 126.47 expands the relief previously applicable to options to provide that filing of S-8 will be treated as timely in respect of restricted stock and restricted stock units if the filing is made before the awards **vest**, regardless of grant timing, as long as the company was also eligible to use Form S-8 on the date of grant. **This new CFI provides an additional benefit: Companies will no longer need to register additional shares on Form S-8 to account for forfeited shares of restricted stock and shares underlying forfeited RSUs that return to the plan pool and become available for grants of new awards.**

Registration fee calculation streamlining

Two new CFIs and one revised CFI apply to the payment of registration fees and will reduce costs and administrative burdens imposed upon issuers.

- Pursuant to new CFI 240.19 under Section 240 of the Securities Act Rules (Rule 457 – Computation of Fee), an issuer may rely on Securities Act Rule 457(o) to calculate the amount of the fee for offerings under a defined contribution plan, using an aggregate dollar amount rather than specifying number of shares.
- Pursuant to new CFI 126.46 under the Securities Act Forms CFIs (Form S-8), where an issuer registered on Form S-8 the offer and sale of securities with vesting conditions and paid the associated filing fees, SEC staff will not object if the issuer applies the filing fees associated with the securities underlying forfeited awards to the registration of future offers and sales under the Form S-8.
- In a somewhat similar vein, CFI 126.19 under the Securities Act Forms CFIs (Form S-8) in respect of share counting under 401(k) plans has been revised to provide that shares no longer need be counted on a “gross” basis, where each purchase reduces the amount of shares available under the S-8, and instead may be counted on a “net” basis, such that, for example, where shares are sold under the plan by one participant and purchased by another participant, only the original acquisition reduces the number of shares available under the S-8. This new guidance effectively legitimizes an approach that we expect is already taken by a considerable number of issuers.

Form 4 filing time zone timing

Finally, a new CFI under Section 135 of the Exchange Act Section 16 and Related Rules and Forms CFIs (Form 4) clarifies the application of the Form 4 filing timing requirements where, as is increasingly common in our global economy, the underlying transaction is effected by a reporting person on a foreign exchange in a non-US jurisdiction. Exchange Act Rule 16a-3(g)(1) requires a Form 4 to be filed before the end of the second business day following the day on which the subject transaction has been executed. CFI 135.05 makes clear that the two-day deadline is calculated beginning with the date in the time zone where the transaction was executed. And so, for example, where a reporting person sells shares on August 25, 2026, at 9:00 am local time (when it is Monday August 24, 2026, in US Eastern Time), the reporting person must make the filing before an August 27, 2026, EDGAR filing deadline based on US ET, such that the Form 4 filing deadline is 10:00 pm US ET on August 27, 2026.

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These new and revised CFIs should benefit issuers by resolving a few complication-causing wrinkles around equity award registration/exemption in the IPO and M&A contexts, reducing administrative burden in fee calculation, and reconciling historical guidance to updated award types and global market practicalities.

Cooley’s compensation and benefits and corporate governance and securities regulation attorneys are available to discuss these issues. Reach out to your existing Cooley contact or email one of the contacts below.

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