

## SEC and DOJ Determine that Section 906 Certification Not Required in Forms 11-K, 8-K or 6-K

On October 8, 2003, the SEC staff announced that, after extensive consideration, the SEC and the DOJ have jointly determined that Section 906 of the Sarbanes-Oxley Act does not require a certification to be included with Forms 11-K, Forms 8-K (even Forms 8-K that include financial statements), or Forms 6-K. We have recently confirmed that position with the staff of the DOJ. Neither the SEC nor the DOJ is expected to issue a release or other written guidance on this matter.

We had previously reported that Senator Biden had included in the *Congressional Record* a statement to the effect that the Sarbanes-Oxley Section 906 certification was intended to apply to Form 11-K (see our June 2, 2003 SEC Alert). At that time, we recommended that, absent contrary guidance from the SEC or the DOJ, the certification be included with Forms 11-K. In view of the SEC/DOJ's recent joint determination, companies need no longer file these certifications with their Forms 11-K, 8-K or 6-K.

### Contact Information

If you have any questions or would like to learn more about these rules, please contact your usual legal advisor at Ropes & Gray.