U.S. ENACTS BROAD NEW REFORMS IN CORPORATE ACCOUNTABILITY

Issues of Particular Concern to Foreign Companies

On July 30, 2002, in response to the recent wave of U.S. accounting and corporate scandals, President Bush signed into law the Sarbanes-Oxley Act of 2002 (the "Act"), which institutes broad reforms in the areas of corporate governance, executive responsibility and oversight of the accounting profession. Some of these provisions, as described below, **became effective immediately upon the Act's enactment** or will become effective by the end of this month. Please see our previous client memoranda for a more detailed discussion of the provisions highlighted in this memorandum.

The Act's provisions generally apply to all companies - domestic and foreign alike - that have securities registered under the U.S. Securities Exchange Act of 1934 (the "Exchange Act") or the U.S. Securities Act of 1933, or that are seeking to publicly offer securities in the U.S. The Securities and Exchange Commission (the "SEC") has been granted general rulemaking authority with respect to the Act, and there are suggestions in the Act's legislative history that Congress intended for the SEC to exercise this authority to establish appropriate exemptions for foreign companies. The SEC has historically shown a willingness to exempt foreign companies from provisions of the federal securities laws that were perceived to depart significantly from the laws and standards of foreign jurisdictions and therefore would dissuade foreign companies from seeking to access the U.S. capital markets. However, until the SEC chooses to exercise this authority, the Act's provisions should be read in accordance with their terms.

Section 906 CEO/CFO Certification

- Section 906 of the Act requires each periodic report filed with the SEC that contains financial statements to "be accompanied" by a written statement from the CEO and CFO certifying that (1) the periodic report "fully complies" with the requirements of Section 13(a) or 15(d) of the Exchange Act, and (2) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. **This certification requirement became effective immediately upon the Act's enactment.**

  ⇒ This certification requirement will apply to annual reports filed on Form 20-F. However, it is not entirely clear whether quarterly financial statements reported on Form 6-K are subject to such requirement. Some practitioners have argued that since a Form 6-K is "furnished" rather than "filed," financial statements on Form 6-K are exempt from this certification requirement. The SEC has so far

declined to provide formal guidance on this issue, but in conversation with us, SEC staff members have acknowledged the strong sentiment among practitioners that this certification should not apply to Form 6-K. Pending clarification from the SEC, we believe that this certification is not required in connection with Form 6-K.

⇒ Certifying a statement knowing that it does not comply with the Act's requirements is punishable by a fine of up to $1,000,000 and/or ten years of imprisonment. Doing so willfully is punishable by a fine of up to $5,000,000 and/or twenty years of imprisonment.

⇒ Attached is a form of Section 906 Certification that we believe satisfies the Act's requirements.

⇒ Note that in June the SEC issued a separate order to the CEOs and CFOs of certain large public companies, requiring them to certify certain of these companies' prior SEC filings. No foreign companies were included in this list.

Section 302 CEO/CFO Certification

- Section 302 of the Act requires CEOs and CFOs in their SEC quarterly and annual reports to also certify, based on their knowledge, to the absence of an untrue statement, or omission, of a material fact and the financial statements' fair presentation, in all material respects, of their companies' financial condition and results of operations. It further requires the officers to make certain certifications as to their companies' internal controls. **The SEC has proposed rules with respect to this certification, and will adopt final rules to be effective as of August 29, 2002.**

⇒ Annual reports on Form 20-F will be subject to this certification. In conversations with us, SEC staff members have indicated the SEC's intention *not* to have this certification apply to Forms 6-K.

Reporting Stock Sales

- Section 403 of the Act shortens the timetable in which officers, directors and 10% stockholders must report changes in beneficial ownership of stock under Section 16 of the Exchange Act. The report must now be filed before the end of the second business day following the day on which the transaction was executed. Previously, such reports had to be filed by the tenth day of the month following the month in which the transaction occurred. **This provision becomes effective on August 29, 2002.**

⇒ Foreign companies that qualify as "foreign private issuers" are currently exempt from reporting under Section 16. The SEC staff has

indicated to us that the SEC does not intend to change this exemption in regulations to be issued later this month.

Audit Committee Requirements

- Under the Act, audit committees of public companies must (1) be comprised solely of independent directors, (2) directly oversee the accounting firm that audits the company and (3) establish certain confidential procedures for employees, known as "whistleblowers," to report questionable accounting practices. Audit committees must be empowered to retain independent advisors at their companies' expense. Additionally, public companies must disclose whether or not a member of the audit committee qualifies as a financial "expert", and, if not, why not. **The SEC will, within 270 days of the Act's enactment, adopt rules requiring the national securities exchanges and the National Association of Securities Dealers Automated Quotation system ("Nasdaq") to de-list companies that fail to comply with these requirements**.

    ⇒ The New York Stock Exchange ("NYSE"), American Stock Exchange ("AMEX") and Nasdaq have each adopted corporate governance initiatives requiring audit committees to be comprised solely of independent directors. In some cases, they have proposed empowering audit committees of listed companies beyond the Act's requirements; for example, Nasdaq has proposed requiring audit committees to approve all "related-party" transactions. These recently adopted corporate governance standards include provisions not contemplated by the Act. For example, both exchanges and Nasdaq have proposed that the boards of listed companies be comprised of a majority of "independent" directors (although the NYSE proposal contains an exception for "controlled" companies in which more than 50% of the voting power is held by an individual, company or group).

    ⇒ The exchanges and Nasdaq have historically been reluctant to impose their governance standards on listed foreign companies that comply with the standards of their respective countries of domicile. In their recently adopted corporate governance standards, the exchanges and Nasdaq have not deviated from this historical position, but have instead proposed to require foreign public companies to disclose any significant ways in which their corporate governance rules differ from those generally applicable to listed companies. This disclosure, in turn, may create market pressure for foreign companies to adopt U.S.-style governance practices. It is unclear, however, whether the upcoming SEC rules will continue to show this flexibility to listed foreign companies.

Code of Ethics

- The Act directs the SEC to require public companies to disclose whether or not (and, if not, the reason therefor) they have adopted a code of ethics for their senior financial officers, and to amend its Form 8-K disclosure requirements to require public companies to immediately disclose any change or waiver to this code of ethics for their senior financial officers. The SEC is to adopt rules implementing this provision **within 180 days** of the Act's enactment.

  ⇒ By expressly referencing Form 8-K, the SEC may well determine this provision to be inapplicable to foreign private issuers since they do not utilize this form for their current reports. The provision would, however, appear to be applicable to foreign companies that do not qualify as foreign private issuers and therefore use Form 8-K.

  ⇒ The exchanges and Nasdaq have proposed to incorporate this provision of the Act into their respective corporate governance standards. Foreign companies would not have to comply with this provision but would have to disclose their non compliance. See our discussion above under "Audit Committee Requirements."

Foreign Professionals

- The Act creates a new oversight board for accounting firms. All accounting firms that wish to audit public companies will have to register with the board and will thereafter be subject to oversight and disciplinary proceedings by the board. The Act also gives the SEC greater authority to censure and/or bar any person from appearing or practicing before the SEC if such person is found to have engaged in unethical or unprofessional conduct or to have intentionally violated the U.S. securities laws.

  ⇒ Foreign audit firms will be required to register with the new oversight board within 180 days after the new oversight board begins operations (nine months following the Act's enactment). The board is empowered to require the registration of foreign audit firms that play a substantial role in the preparation of audit reports but do not themselves issue such reports. Objections to the extraterritorial reach of this provision have been lodged with Congress by the European Union and by senior British officials.

  ⇒ Foreign lawyers are subject to the SEC's enhanced censure and/or bar authority. This provision **became effective immediately upon the Act's enactment.**. The Act also directs the SEC to establish rules of professional conduct for attorneys representing public companies, including a rule requiring an attorney to report evidence of a material

violation of securities laws or breach of fiduciary duty by the company or agent of the company to the company's chief legal counsel or CEO and, if they do not appropriately respond, to report the evidence to the audit committee or the independent directors. Foreign attorneys may want to consider whether these provisions are consistent with their domestic standards of professional ethics.

Extraterritorial Application of Certain Provisions

Additional provisions of the Act of particular concern to foreign companies with securities traded in the U.S. include:

- Prohibitions on any new personal loans by a company or its subsidiaries to executives and directors. Loans in existence prior to July 30, 2002 are not prohibited, but may not be renewed or modified. Until the scope of these provisions is clarified, companies should refrain from making new credit arrangements (including guarantees) or renewing credit arrangements. Note that this provision could be interpreted to prohibit loans to offshore executives and directors.

- Protection for employees ("whistleblowers") that provide information about a company to investigators (whether internal or governmental), including civil liability (and possible criminal liability) for any company or subsidiary, employee, contractor or agent of such company that takes retaliatory action against a whistleblower. These protections **became effective immediately upon the Act's enactment.** Note that these provisions could be interpreted to cover offshore employees.

- Restrictions on trading of securities by executive officers and directors during periods when U.S. employees may not trade securities (known as "blackout periods") under U.S. employee pension plans. The SEC will issue rules adopting these restrictions within **180 days after the Act's enactment** and will clarify the scope of these restrictions.

- Forfeiture by CEOs and CFOs of bonuses or other incentive-based compensation and/or gains from the sale of company securities received in the 12 months following the first public filing of a financial statement that a company is subsequently required to restate, if such restatement is due to financial reporting misconduct. The misconduct need not have been committed by the CEO or CFO. This provision **became effective immediately upon the Act's enactment.**

- The Act mandates "real time," "plain English" disclosures by all companies. Although no formal proposal has yet been made pursuant to this mandate, commentators have suggested that the SEC will, among other things, toughen its disclosure requirements for foreign private issuers, possibly (i) requiring them to file quarterly reports akin to the Form 10-Q and current reports akin to the Form 8-K

currently filed by domestic issuers, and (ii) accelerating the timetable for the filing of their annual reports.

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If you wish to obtain additional information regarding this new legislation or other initiatives, assistance in developing a detailed program to help ensure compliance or copies of any of our previous client memoranda, in London please contact Gregory Astrachan (44-207-696-5442, gastrachan@willkie.com), and in New York please contact John S. D'Alimonte (212-728-8212, jd'alimonte@willkie.com), Yaacov M. Gross (212-728-8225, ygross@willkie.com), Jeffrey S. Hochman (212-728-8592, jhochman@willkie.com), or the partner who regularly works with you.

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August 8, 2002

FORM OF SECTION 906 CERTIFICATIONS

Exhibit 99.1 (Chief Executive Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of _______ (the "Company") on Form 10-Q for the period ending ___________ as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, _________________, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ (-)

[Name]
Chief Executive Officer
[Date]

Exhibit 99.2 (Chief Financial Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of _________________ (the "Company") on Form 10-Q for the period ending ______________ as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, _______________, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ (-)

[Name]
Chief Financial Officer
[Date]