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November 14, 2008



LETTER OF COMMENT NO. 49

Mr. Russell G. Golden  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P. O. Box 5116  
Norwalk, CT 06856-5116

**File Reference Nos.: 1610-100 and 1620-100**

**Re: Proposed Statements of Financial Accounting Standards, *Accounting for Transfers of Financial Assets—an amendment of FASB Statement No. 140*, and, *Amendments to FASB Interpretation No. 46(R)***

Dear Mr. Golden:

Cox Enterprises, Inc. (“Cox”) appreciates the opportunity to comment on the Proposed Statements of Financial Accounting Standards, *Accounting for Transfers of Financial Assets—an amendment of FASB No. Statement 140*, and, *Amendments to FASB Interpretation No. 46(R)*, (the “Proposed Statements”). We support the Board’s efforts to improve financial reporting for consolidations and for companies involved with transfers of financial assets, as well as the Board’s efforts to increase the transparency of the related disclosures. However, we do not support the Proposed Statements as currently drafted primarily because of the adverse business consequences that we believe will surely result for companies such as Cox and its wholly-owned subsidiary, Manheim Auto Auctions, Inc. (“Manheim”), as well as the potentially severe macroeconomic consequences to the automobile industry as a whole—specifically, 15,000 auto dealers and numerous manufacturers, rental car companies, and fleet management companies. Furthermore, we believe that the Proposed Statements, as currently drafted, would require Cox to account for Manheim’s securitization of certain loans receivable in a manner that is inconsistent with the underlying economics of its arrangement.

We believe the Board should more fully consider the potential economic implications of the Proposed Statements across a broad array of industries prior to issuing a final Standard. We believe that doing so would require significantly more due process, and hence more time, than has currently been afforded the project to date. We suggest that the Board host additional public round table discussions in which constituents from a wider array of affected industries can be heard. In the meantime, we would support increased disclosure requirements, such as those contained in Proposed FSP 140-e and FIN 46(R)-e. We acknowledge that some action is needed to eliminate the abuses of complex financial structures—particularly those that are highly levered, lack transparency, serve no business purpose, and in some cases, such as the securitization of sub-prime mortgages, are layered with assets of questionable value and depend on repayment from borrowers with uncertain credit. However, as currently drafted, the Proposed Statements are punitive at the very least (and potentially fatal at worst) to the vast

number of companies, such as Cox and Manheim, that have effectively and transparently utilized similar structures in a nonabusive manner for many valid and meaningful business purposes.

If the Board believes it must move forward with issuing the Proposed Statements as final Standards, regardless of the timeframe, it should consider making revisions in accordance with our comments and suggestions below.

### **Comments and Suggestions Regarding the Proposed Statements**

#### ***Consideration of Potentially Adverse Economic Consequences***

If the Proposed Statements are issued as final Standards, we believe that there will be adverse consequences for companies that may have been unintended or may not have been fully considered. These consequences are severe enough that business would be stifled, at a minimum, and/or some businesses could be terminated. The result will be detrimental to the auto industry as a whole, and catastrophic in many individual cases. In fact, it will stifle lending at a time when the government mandate is just the opposite. The implication would be a severe reduction in the used car market, which in turn would have a cascading impact on the new car market as well.

Cox, through Manheim, is the world's leading provider of automotive services to commercial sellers and automobile dealers. Manheim currently operates approximately 145 auctions, primarily in North America. As a provider of auction services, Manheim facilitates the wholesale exchange of used vehicles through an auction marketplace, which aligns professional buyers and sellers of millions of vehicles that exchange hands annually. Approximately 5 million cars sell at our auctions each year and another 5 million at other auto auctions. Of the 20 million wholesale car transactions consummated each year, we estimate that more than 90% are financed by dealers.

Manheim formed a finance company called Manheim Automotive Financial Services ("MAFS") in 1993. MAFS offers financing to a select group of primarily independent dealers in order to facilitate the purchase of cars. This not only provides a convenient, efficient means for doing so, it also allows for better credit and background checking since Manheim likely knows these dealers better than banks. These loans are short term in nature, outstanding for about 45 days on average and are supported by a UCCI filing on the purchased automobile, the title to which MAFS holds until the loan is paid in full. Therefore, unlike a credit card receivable, there is a valuable and tangible asset to support the obligation. In most cases the dealers/borrowers also personally guarantee the repayment of the loan and, in some cases, supply additional collateral in the form of cash deposits and/or real estate. These loans provide financing to purchase autos that stimulate retail sales and have a significant impact on the greater automobile market.

When MAFS was first established, Cox borrowed the funds to provide the financing. As the program grew, a revolving securitization of the loans receivable was developed. The securitization of the loans receivable provides an alternative source of financing, broadening

the access to capital for MAFS and, in turn, the wholesale auto dealers. To accomplish the securitization of the loans receivable, a legally isolated, bankruptcy remote entity—Manheim Funding Corporation (“MFC”)—was created that met the definition of a Qualifying Special Purpose Entity (“QSPE”) contained in FASB Statement No. 140. MAFS sells the loans receivable to MFC, in a transaction deemed a true sale by law. MFC in turn pledges the receivables as security to bank conduits which then sell commercial paper into the market. The proceeds of the sales are used by MFC to buy the receivables from MAFS. All of the receivables are supported by the underlying value of the autos to which MFC has title. MAFS services the loans that are transferred to MFC and, in that capacity, is responsible for collecting and remitting principal and interest payments, monitoring overdue payments, and managing defaults. MFC is a bankruptcy remote entity with no recourse to MAFS, Manheim or Cox. There is no layering of leverage in our process, which is a significant differentiator of our structure from the abusive structures which plague the mortgage industry.

As previously mentioned, if the Proposed Statements are issued as final Standards, the impact on MAFS, Manheim, Cox, and the auto industry, will be substantial. We believe the transfers of loans receivable from MAFS to MFC would meet the derecognition requirements of the proposed amendments to FASB Statement No. 140. However, the proposed amendments to FASB Interpretation No. 46(R), as currently drafted, would require Cox to perform a qualitative assessment as to whether MAFS has a controlling financial interest in MFC and, thus, is MFC’s primary beneficiary. According to the illustrative examples in the Proposed Statement, the fact that MAFS provides servicing activities that include default management appears to result in a conclusion that Cox would be required to consolidate MFC via its MAFS subsidiary, which would result in re-recognizing the transferred loans receivable and the associated debt at fair value at the date of adoption on Cox’s consolidated balance sheet.

Incurring additional debt on our balance sheet in this manner (i.e., consolidation of MFC), would force us to reevaluate our financial position from a liquidity and leverage perspective at a time when capital is very constrained. As a result of the constrained capital position, Cox would likely discontinue or significantly downsize the MAFS program. This would diminish its desired intent for dealer relationship enhancement and flow through of business to the auctions. In turn, this has a direct impact on the used car market and corresponding detrimental impact on the new car market which is dependent on used car trade-ins and the viability of that market. The impact appears to conflict with the current government initiative of business stimulation, especially business that is conducted in the most ethical manner.

In addition to being detrimental to Cox’s business, we believe a reduction or elimination of the MAFS program will be extremely harmful to participating auto dealers at a time when the auto industry is experiencing significant and well-documented difficulties. Today MAFS has on average about \$1 billion in these type loans outstanding. This represents roughly \$8 billion dollars of annual liquidity and over 1 million vehicles to auto dealers to facilitate the purchase of cars through auctions (based on a turnover rate of approximately 45 days). Without access to MAFS loans, dealers would need to find alternative funding sources at a time when capital is universally constrained, or, entirely unavailable. Without this capital, volume will be impacted, which will have ripple effects down to the consumer whereby car values could be affected due to lack of a liquid market. Additionally, if used car disposal is

impaired, it will directly affect new car sales where a trade-in is typically taken. The collective impact of these factors is potentially catastrophic as it trickles through the entire automotive system with the likelihood of seizing up the entire wholesale automotive marketplace, which will, in turn, seize up the new automotive car system. While we cannot be sure of the final impact, there are over \$600 billion in retail sales annually, including 44 million used car sales, and, if financing is cut off in this system, a large portion of this activity will stop.

### ***Consolidation Not Reflective of the Underlying Economics Nor Substance of the Arrangement***

Consolidation of MFC is conceptually objectionable for several reasons but primarily because it does not reflect the true economics and business purpose of the arrangement and could lead to confusion among users of the financial statements. Since the loans receivable have been transferred to a legally isolated, bankruptcy remote entity, consolidation of MFC would produce the nonsensical result of Cox continuing to recognize loans receivable over which it cannot exercise any control—by any reasonable definition of that term—as assets in its consolidated balance sheet. Furthermore, consolidation of MFC would result in the recognition of liabilities for debt for which Cox has no legal obligation to satisfy. This is not only inconsistent with the true economics of the arrangement, but is not reflective of the legal structure itself.

### ***Clarification of the Impact of Servicing Activities***

The proposed amendments to FASB Interpretation No. 46(R) are unclear on how servicing activities impact the qualitative assessment of whether the enterprise has a controlling financial interest in the entity and, thus, is the entity's primary beneficiary. The principal guidance regarding the impact of servicing rights is contained in two examples in the Proposed Statement—Example 1 (paragraph A5) and Example 6 (paragraph A71). In Example 1, primary servicing activities are described as being primarily administrative in nature, including remittance of payments and similar activities. In that example, primary servicing activities do not include default management; instead, that activity is performed by a special servicer. However, in Example 6, primary servicing activities include overall default management and are performed by a single primary servicer. It is unclear whether which party performs default management is intended to be the determining factor for which enterprise is the primary beneficiary, although Example 6 implies that it is.

Assuming the Board intends that the right to manage defaults is determinative to which enterprise is the primary beneficiary, we strongly suggest that the Board clarify how much, if any, discretion is required on behalf of the servicer in managing defaults in order to reach a conclusion that the enterprise is the primary beneficiary of the entity. We struggle to understand how a servicer with a limited number of contractually prescribed options in the event of default, in substance, has the “power to direct matters that most significantly impact the activities” of the entity.

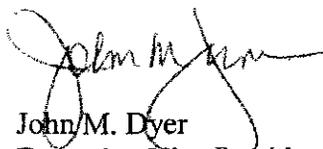
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In summary, MAFS has operated in a responsible way since its inception. Our structure was set up strictly for and to facilitate business and not as a means to circumvent generally accepted accounting principles nor to reduce the transparency of financial disclosure. The proposed changes will punish good business in an attempt to weed out a problem brought about by others' bad business practices. This will adversely affect our business, auto dealers, and ultimately the consumer due to decreased auction flow which will directly affect the dealers' ability to buy, sell and transact in an efficient and cost effective manner at a time when there are few, if any, alternatives for the dealer. These are unintended consequences of the Proposed Statements that have significant negative business implications at a time when the economy can least afford it. It appears we are "throwing out the baby with the bath water."

The Proposed Statements may seem like an appropriate response to abuses from financially engineered structures with little business purpose. However, we offer an example of a situation where these structures have been used in a positive manner to promote business commerce, provided much-needed liquidity to the auto sector and the arrangement has been appropriately disclosed in our financial statements. We ask that the Board consider additional fact patterns such as this and give more substantive consideration to the qualitative factors involved.

We appreciate your consideration of our concerns. If you have any questions concerning our comments, please contact Richard Jacobson (Senior Vice President—Finance) at 678-645-0111, or Susan Coker (Vice President & Treasurer) at 678-645-0810. We are available and welcome any discussion.

Sincerely,



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Executive Vice President & Chief Financial Officer  
Cox Enterprises, Inc.



Dean H. Eisner  
President & Chief Executive Officer  
Manheim Auto Auctions, Inc.