HYSTER-YALE
MATERIALS HANDLING

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and Assistant Secretary

June 10, 2015

VIA Electronic Submission (*rule-comments@sec.gov*)
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Pay vs. Performance Disclosure – Comments on Proposed Regulations (File Number S7-07-15)**

We are providing comments in connection with the notice of proposed rulemaking issued by the Securities and Exchange Commission (the "SEC") to implement Section 953(a) of the Dodd-Frank Act, which requires the SEC to adopt rules requiring registrants to disclose the relationship between executive compensation actually paid and the company's "financial performance...taking into account any change in the value of the shares of stock and dividends of the issuer" (the "Pay vs. Performance Regulations" or "Proposed Regulations").

Because the statute:

- does NOT require the use of TSR as the sole measure of a company's financial performance;
- does NOT require the presentation of any "peer group" financial information; and
- does NOT define equity compensation "actually paid" as equity compensation at the time of vesting,

we strongly urge the SEC to reconsider whether the rigid approach contemplated by the Proposed Regulations would accomplish the objectives of the statute or if it merely places another time-consuming and costly burden on issuers without providing any measurable value to the investor community.

In addition, requiring a new proxy table, entitled "Pay for Performance," with prescribed compensation information for the principle executive officer ("PEO"), average compensation for the non-PEOs and "total shareholder return" ("TSR") information for the registrant and a peer group has the potential to mislead investors and encourage risky behavior to artificially inflate TSR, both in terms of earnings and the price to earnings ("P/E") ratio, over the short-term. Not only is this fundamentally inconsistent with a focus on long-term stockholder value, this focus on short-term improvement in a company's stock price, to the exclusion of other considerations, is exactly the type of moral hazard the Dodd-Frank Act was meant to discourage.

In the event that the SEC is unwilling to propose different regulations that require disclosure that more clearly demonstrates the linkage of financial performance to executive compensation, we respectfully request that the SEC take into consideration the additional clarifications and/or specific changes to the Proposed Regulations described below.

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• [redacted]

Company Summary

Hyster-Yale Materials Handling, Inc. ("Hyster-Yale" or the "Company") is a leading global designer, engineer, manufacturer, seller and servicer of a complete line of electric, warehousing and internal combustion engine lift trucks and aftermarket parts marketed globally primarily under the Hyster® and Yale® brand names. Strategic leadership and global support are provided to Hyster-Yale through its operating company subsidiaries. In 2014, Hyster-Yale had total consolidated revenues of $2,767.2 million and employed over 5,400 employees in 10 countries.

The following information is relevant to Hyster-Yale's comments on the Proposed Regulations:

- The identity of our named executive officers ("NEOs") in our proxy statement varies from year to year depending on the performance of our underlying business units. In addition, the incentive compensation for certain of our senior executives is based on the performance of a particular business unit (or group of units) within their primary area of responsibility, as opposed to the Company as a whole. Hyster-Yale does not currently use TSR as a performance objective in our incentive compensation plans. TSR is a performance metric applicable to company-wide performance, not individual business units (which forms the basis of the performance objectives of certain of our senior executives), making TSR an irrelevant measure with respect to these individuals.

- Senior executives of the Company who are employed in the United States ("U.S. NEOs") currently participate in an equity-based long-term incentive compensation plan sponsored by Hyster-Yale (the "Equity LTIP"). All other senior executives of the Company ("Non-U.S. NEOs") participate in a cash-based long-term incentive plan (the "Cash LTIP"). The Proposed Regulations treat (i) cash-based incentive compensation as "actually paid" in the year earned, regardless of when it vests or when it is paid and (ii) equity-based incentive compensation as "actually paid" in the year it vests, as opposed to the year of grant. In any given year, as described below, Hyster-Yale may have some NEOs who participate in the Equity LTIP and others who participate in the Cash LTIP, creating a severe disconnect in the required disclosure for our NEOs' incentive compensation in a given year compared to the Company's TSR for that year.

- Although the Company believes that sustained operating performance and earnings growth will ultimately be reflected in Hyster-Yale's stock price, a one-, three- or even five-year period is too brief a time over which to measure the results of significant strategic initiatives, many of which may require substantial up-front investments. These up-front investments in important strategic initiatives may even cause a short-term decline in TSR. We believe our corporate financial and strategic performance is reflected in our stock price only when measured over a longer term. For this reason, instead of using TSR as a performance objective in our incentive plans, (i) we grant our equity awards in the form of immediately vested and taxable restricted stock[1] that is subject to transfer and other restrictions for a period of 10 years and (ii) our Compensation Committee adopts performance measures in our incentive plans, which we believe relate to creating sustainable, long-term stockholder value, such as return on total capital employed over extended periods, rather than tying compensation directly to market returns. We believe these measures promote a holistic view of Company performance.

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[1] Due to the nature of Hyster-Yale's restricted stock grants and the type of rights associated therewith, the stock is subject to federal income taxes on the date of grant. The Internal Revenue Code Section 83(b) elections to defer income taxation are not available.

- Because our stock is thinly traded, our stock price is volatile and may not reflect actual operating results over a given period. For example, in 2014, our average trading volume was only 63,217 shares and we traded below 40,000 shares on 46 days. Since the Company's stock began trading in October 2012, our stock price has been as low as $37.68 and as high as $108.13.

- Hyster-Yale does not use (nor is it currently required to use) a "peer group" of companies in connection with establishing executive compensation. As stated in our proxy statement, the Compensation Committee uses the "The Hay Group All Industrials" survey index as the benchmark for setting executive compensation. For purposes of our Regulation S-K, Item 201(e) disclosure (the stock performance graph), we have elected to compare Hyster-Yale's TSR to that of the Russell 2000 Index and the Russell 2000 Producer Durables Index. We present this information as of the end of each quarter (since the Company's stock began trading in October 2012), because we believe that measurement at a single point of time in each year does not adequately reflect our stock performance over the period due to numerous periodic fluctuations throughout the year in both the price of the Company's stock and the level of the indices.

TSR is an Inappropriate Measure of Financial Performance that Will Mislead Investors – As a Result, the Proposed Regulations Should be Reconsidered in their Entirety

Because of their central focus on TSR, Hyster-Yale does not believe that the Pay vs. Performance Regulations, as currently proposed, will provide meaningful information to investors. In fact, we believe that the information required under the Proposed Regulations will mislead investors.

We agree that the intent of the statute is to help stockholders in understanding the relationship between a company's financial performance and executive pay. However, there is nothing in the statute or its legislative history that requires the use of a single metric—or TSR, specifically—to establish this link. By mandating a new proxy table based heavily on TSR, the SEC is endorsing a view that TSR is an important metric for a compensation committee to use in establishing performance-based compensation. As a result, any company that does not use TSR as a performance metric in its incentive compensation plans may be subject to a negative perception among market participants and regulators, despite having legitimate and compelling reasons for using other metrics.

We feel that these sentiments were also expressed by SEC Commissioner Daniel Gallagher, who, in connection with voting against the Proposed Regulations, stated: "[A] simple TSR-based comparison is likely to produce an excessive number of false positives. It will show companies where pay seems to be out of alignment with performance, based on this simplistic metric, but where a more nuanced evaluation would show that pay is actually well-aligned with performance. In fact, ISS used to use a single TSR-based metric as an initial screening device for alignment of pay with performance. But ISS recently moved to more sensitive alignment tests, noting that while 30% of companies failed the initial TSR-based screening, more than two-thirds of those companies actually exhibited alignment of pay with performance when analyzed more closely."

Furthermore, while TSR is objective and measureable, we believe it can be an inaccurate indicator of a Company's financial performance because it relies exclusively on stock price. We focus performance on return on capital employed, return on equity and the growth of our earnings over extended periods of time. We do this because we believe our job is to obtain a strong return on total capital employed and return on our equity being deployed on behalf of the stockholders who are owners of the equity. We then try to incentivize earnings growth while maintaining strong returns on capital. TSR, on the other hand, focuses additionally on the price/earnings ratio put on the earnings by the stock market – something that is influenced by many extraneous factors that are not under management's control. Over long periods, we expect strong returns on capital and earnings growth to be reflected in the stock price, but prices can swing dramatically depending on what is in or out of favor with the market at a particular moment. In our case, TSR is a particularly inaccurate indicator of our financial performance due to the thinly-traded nature of our stock. The disposition of an even insignificant amount of Hyster-Yale stock by an investor for reasons unrelated to financial performance (such as for tax or other strategic reasons) could cause a significant drop in Hyster-Yale's stock price irrespective of our operating results. As a result of a number of long-term holders in our stock, only about 10% of our outstanding shares trade during any given year and that 10% turns anywhere between 4 and 10 times over the year.

We also believe that a focus on TSR could encourage executives in other public companies to engage in risky behavior to artificially inflate stock price and P/E ratios over the short-term, with predictably negative long-term impacts on companies and their stockholders. This, paradoxically, is exactly what the Dodd-Frank reforms intended to deter. Instead, companies should be free to focus on long-term strategy, which may include making substantial up-front investments in strategic initiatives that may negatively impact TSR over the short-term. Companies should be able to make these types of investments without the fear of having to make damaging disclosures that market forces seeking short-term returns could use to companies' detriments. Stated differently, we believe that a central emphasis of the Dodd-Frank Act was that executives "do the right thing" for the long-term benefit of their companies and stockholders. The Proposed Regulations would not achieve this objective, because any company whose business strategies and compensation practices do not fit squarely within the rigid application of a TSR table will face unwanted and unnecessary criticism, irrespective of a proven history of creating long-term stockholder value and implementation of constructive long-term strategies. For example, market participants could base their Say-on-Pay recommendations and votes solely on short-term TSR outcomes without understanding overall compensation strategy.

We believe that the Proposed Regulations would be especially unfair to us, because the Hyster-Yale Compensation Committee has taken a thoughtful approach to executive compensation decisions that produced a compensation philosophy that does not focus on or reward short-term results. Under our compensation plans, awarded stock is non-transferrable, and may not be hedged or pledged, for a period of 10 years. The considerations leading to this approach, and the long-term benefits to stockholders that we believe it creates, may be lost on market participants that focus on the new TSR table without expending the considerable time and effort required to read and understand our compensation discussion and analysis ("CD&A") and other compensation tables.

Hyster-Yale (and companies like it) should be able to communicate its "pay for performance" story to investors in the way we choose; provided that we satisfy the general guidelines set out in the statute. For the foregoing reasons, we ask that the Proposed Regulations be reconsidered in their entirety and replaced with a more flexible approach. Specifically, we recommend that:

- Each registrant should be allowed three or more years to determine the type of stock performance to disclose (P/E ratio, TSR or other), as well as flexibility in selecting the point of time for determining the stock price (e.g., average daily close vs. 12/31); and
- No disclosure of peer group financial information should be required.

<u>Otherwise, the Pay vs. Performance Regulations Should be Substantially Altered Prior to Implementation</u>

In the event that the Proposed Regulations are not reconsidered in their entirety, there are many changes that may be made that we believe would simplify the data gathering process, reduce costs and improve the information provided to investors, while complying with both the intent and wording of the statute. The following recommendations (in no particular order) are in response to certain inquiries by the Staff relating to the Proposed Regulations.

1. **Peer Group TSR**. Nothing in the statute requires comparison of executive compensation to the TSR of a peer group, and this requirement should be eliminated in its entirety from the Proposed Regulations. Contrary to the SEC's assertion that this disclosure will "increase the comparability of pay-versus-performance disclosure across registrants," we believe this disclosure will merely confuse investors. Very few, if any, registrants use the same peer group in their CD&As. Registrants who use a peer group to set compensation spend a great deal of time, effort and money to identify a peer group that fairly reflects their unique circumstances. In addition, many companies are required (due to peer group member bankruptcies, M&A activity and similar events) to change the make-up of their peer group almost annually, which would make the year-over-year comparison of the TSR of the peer group less meaningful. In addition, it may be extremely time consuming and costly to determine the TSR of a peer group year after year.

2. **Determination of "Executive Compensation Actually Paid."** We appreciate that the Proposed Regulations would allow companies to start with the compensation that is already required to be disclosed in the Summary Compensation Table (the "SCT"), rather than requiring registrants to generate wholly new information. However, there are some improvements that we believe should be made to this requirement:

    a. **Alternative to Compensation "Actually Paid."** In lieu of the "compensation actually paid" definition contained in the Proposed Regulations, which starts with SCT compensation data and specifies certain adjustments, each company should be permitted to define "compensation actually paid" for the year according to its own payment practices and then reconcile that amount to the SCT. Companies should then be required to provide a footnote disclosure of the executive's W-2 compensation for the year. These two data points would provide sufficient disclosure for investors to make informed decisions and would allow each company to describe the unique characteristics of its compensation program, if any.

    b. **Treatment of Incentive Compensation/Equity Awards**. The Proposed Regulations treat cash-based incentive compensation as "actually paid" in the year earned, regardless of when it vests or when it is paid. However, for equity-based incentive compensation, an award is treated as "actually paid" in the year it vests, as opposed to the year of grant (as required under the SCT).

    - A company may have NEOs who are compensated differently, with some executives receiving cash-based incentive compensation while others receive equity-based compensation. Because the Proposed Regulations require different timing for the reporting for cash-based and equity-based incentive compensation, the SEC has created the potential for a mismatch in incentive compensation reporting. For example, a company's Pay for Performance table for a given year could include (i) one NEO's equity-based incentive compensation that was "actually paid" (i.e., vested) in that fiscal year, but was awarded or earned for performance in a prior year that is not related to the TSR shown in the table for that year and (ii) another NEO's cash-based incentive compensation that was "actually paid" and earned in the applicable year. This disparity has the effect of misleading investors as opposed to providing meaningful disclosure with respect to the relationship of a company's executive compensation and its financial performance.

- Another issue concerns equity-based compensation that vests within the first 2-1/2 months of the following calendar year. These types of awards should be considered "actually paid" in the prior year (the year earned), not in the year they vest, or there will be a disconnect between the years and it will skew the disclosure. Utilizing the 2-1/2 month rule (which is a well-known concept for tax purposes) will not be confusing to investors and will provide a more accurate picture of compensation that is "paid" to an NEO for the year. Companies accrue these awards and deduct them for income tax purposes in the prior year (the year earned). This will provide increased continuity between TSR and the compensation that is disclosed in the new table.

<u>Application of Proposed Regulations to Hyster-Yale</u>

- <u>Non-U.S. NEOs</u>: Depending on the year, one or more of our NEOs may be a Non-U.S. NEO who is eligible to receive cash-based incentive compensation under our Cash LTIP (as opposed to equity-based compensation). All of our defined benefit pension plans are frozen. Under the Proposed Regulations, the cash-based incentive compensation "actually paid" to these executives as shown on the new proxy table for a year and the cash-based incentive compensation "payable" (or earned by) the executives as shown on the SCT for the year will be identical, except that the compensation of any Non-U.S. NEO who has a frozen pension benefit will be reduced by the actuarial increase of the value of that pension that was included in the SCT for that year.

    - Note that the Proposed Regulations require us to show that Non-U.S. NEOs who participate in our Cash LTIP are "actually paid" their long-term incentive benefits for the year, even though those amounts (i) are not credited to their LTIP account and not vested until January 1 of the following year and (ii) are not actually paid for another 3 years; and

    - Provided that the Proposed Regulations are revised to (i) give companies *the option* of excluding non-qualified deferred compensation benefits until they are vested and (ii) provide a mechanism for making adjustments for clawbacks (as described below), then Hyster-Yale agrees that the definition of compensation in the Pay vs. Performance Table in the Proposed Regulations (as revised) would clearly reflect compensation that is **<u>earned by</u>** any Non-U.S. NEO of Hyster-Yale for the year in question. This is different than the amount that is "**<u>actually paid to</u>**" the NEOs and it should be. Our Compensation Committee compensates our NEOs based on their performance for the year and this should be judged against the Company's performance for the same year. Whether or not certain amounts are deferred to or taxed in a different year is beside the point.

- <u>U.S. NEOs</u>: The Company's U.S. NEOs are eligible to receive equity-based restricted stock awards under our Equity LTIP that are earned in year 1 and granted, immediately taxable and fully vested within 2-1/2 months of year 2. However, those awards generally must be held for a period of 10 years subject to very limited exceptions as described in our proxy statement. During this 10-year holding period, the ultimate value of the shares is subject to change based on the value of the shares of stock. Our Compensation Committee believes that the use of the Equity LTIP awards is highly motivational and encourages our executives to maintain a long-term focus on our profitability, which is also in the Company's and our long-term stockholders' best interest. Under the Proposed Regulations, there will be a total disconnect between the compensation shown on our SCT and the new Pay vs. Performance proxy table for any U.S.

NEOs as a result of the requirement that we subtract the current year's equity awards that are included in the SCT (based on the grant date) and instead include the prior year's equity awards in the Pay for Performance proxy table (based on the vesting date). This is true even though the vesting date for the current year awards occurs within 2-1/2 months after the end of the current year.

- **Example**: The SCT in our 2015 Proxy Statement includes the Hyster-Yale Equity LTIP awards that were earned for service performed in 2014. The awards were fully vested in February 2015. They were granted based on the performance of Hyster-Yale during 2014. The Proposed Regulations would require that the 2014 Equity LTIP awards be subtracted from the Hyster-Yale NEOs' 2014 compensation and that the 2013 Equity LTIP awards be included since the 2013 awards were fully vested in February 2014. The 2013 Equity LTIP awards had nothing to do with Hyster-Yale's performance in 2014. Further, if one or more of our NEOs for 2014 had been a Non-U.S. NEO, the cash-based incentive compensation reported on the new Pay for Performance table for the Non-U.S. NEO would have been both granted in and based on the performance of Hyster-Yale during 2014. Thus, the compensation disclosed on the new Pay for Performance table for the Hyster-Yale NEOs would be a mixture of compensation that was earned in 2013 and 2014, which would then be compared to Hyster-Yale TSR performance for 2014 only.

- **Exception Needed for Vesting of Equity Awards Within 2-1/2 Months of Year-End**. Requiring Hyster-Yale to report our equity-based awards in this manner in the new proxy table will be misleading. It is the same as requiring other registrants to report short-term cash based-incentives in the year paid as opposed to the year earned. Therefore, the Proposed Regulations should contain an exception for equity awards that vest within 2-1/2 months after year end in order to maintain the integrity of the "amounts paid" concept of the statute and to provide on "apples-to-apples" comparison of executive compensation and company TSR for the correct period.

c. **Treatment of Negative Adjustments and "Clawbacks".** The Proposed Regulations do not address how a registrant should reflect a negative adjustment or "clawback" of an incentive award from a prior period. The final Pay vs. Performance Regulations should clarify how reduced awards/negative adjustments should be reflected in the new Pay for Performance table.

d. **Defined Benefit Pension Adjustment**. The Proposed Regulations require deducting any increase in the actuarial present value of pension benefits that was included in the SCT, including the service cost for the year. Since plan sponsors typically do not obtain service cost on a per-participant basis, this will be another added cost. The adjustment in the Proposed Regulations is beneficial to Hyster-Yale (and all companies with frozen plans), because the service cost for the year is $0, while there is often an increase in the actuarial present value of a frozen pension (based on interest rates, etc.) that is required to be disclosed in the SCT. As the Preamble to the Proposed Regulations correctly points out, however, the actuarial increase is not a true indicator of an "amount paid" to the executive either, because it is based on many factors, none of which (i) are comparable between companies and/or (ii) have anything to do with the amount of the benefit earned by the executive during the year. The statute uses the phrase "actually paid." If the intent is to equate the phrase "actually paid" with "cost to the company" for the year, then the service cost for the year for the defined benefit pension is a close proximity. However, if an NEO is not vested in his/her pension benefits, companies should have the option to exclude the service cost until vested. This should be optional, since it may be helpful for companies with "cliff" vesting schedules (i.e., 0% vested until the employee completes five years of service) but may be difficult to calculate for plans with graded vested schedules (i.e., vest at the rate of 20% for each year of service).

e. **Above-Market Earnings on Non-Qualified Deferred Compensation ("NQDC")**. We believe the treatment of above-market earnings under the Proposed Regulations is appropriate. As is currently required under the SCT, only the above-market earnings portion of the earnings on NQDC should be disclosed. Below or at-market earnings are considered "interest" and not "wages" under tax law. (See Treas. Reg. 31.3121(v)(2)-1(d)(2) – only "above market" interest is taxable as wages for FICA tax purposes). The fewer adjustments that are made to the SCT earnings, the easier the new proxy table will be for investors to understand and for companies to produce. Companies should have the *option* to exclude amounts that are not vested (as opposed to mandatory exclusion).

f. **Defined Contribution Retirement Benefits**. We believe the treatment of contributions to defined contribution retirement plans under the Proposed Regulations is appropriate. Companies should have the *option* of excluding contributions that are not vested (as opposed to mandatory exclusion). Companies that make this election would then have to include all prior amounts in the year that they become vested. Most companies would not take advantage of this rule, due to the recordkeeping requirements, especially if they had to track gains and losses associated with the contributions.

3. **Compensation Disclosure Should Be Limited to the PEO (and any other NEO if the PEO is not the most highly compensated NEO for the year).** The statute does not specify which executives should be included in the disclosure. Many, and with respect to some companies, most, stockholders are only interested in the compensation of the PEO because of his or her position of leadership and the fact that the PEO is usually a company's most highly compensated employee. Due to the differences between the compensation information that is required under the Proposed Regulations and the information required in the Summary Compensation Table ("SCT"), and the fact that the compensation of the other NEOs will be less than that of the PEO, the additional disclosure required in the Proposed Regulations for the non-PEOs will not yield any additional useful information to investors that they cannot already obtain from the SCT and the other tables in the proxy. For instance, we believe requiring disclosure of information for up to two additional employees who are not even employed at year end, but who are required to be included in the SCT, yields little value to investors and will only skew the "average non-PEO compensation" results when compared to the company's TSR (because they will likely have not been employed for a full year and affect averages accordingly).

4. **XBRL Tagging Requirement Should Be Eliminated**. The data in the new proxy table should not be required to be tagged in XBRL format or any other format (such as XML). This would be an unnecessary expense for companies, because the XBRL-tagged data would be used by very few individuals. Given our suggestion above regarding a company-specific approach to the performance criteria used to communicate the pay for performance, we believe that the other information presented will not be useful when compared between registrants so tagging that information to assist in the comparison is unnecessary. Furthermore, information in annual proxy statements is not currently required to be tagged in XBRL. At Hyster-Yale and, we suspect, many other companies, the personnel that work on the annual proxy statement have no experience with XBRL, which means

that companies will incur substantial additional expenses to fulfill this requirement. If tagging is required, the effective date of the tagging requirement should be extended until three to five years after the Pay vs. Performance Regulations are otherwise fully implemented. We believe registrants will have enough difficulty assembling the required information and deciding whether supplemental information should be included without the added complexity of new XBRL tagging requirements. Finally, in the event that XBRL tagging is eventually required, it should only be required for required information and not for any supplemental information that a registrant decides to supply.

5. **Effective Date**. The final regulations should be effective no earlier than the 2018 proxy season (using 2017 compensation information). Companies will need ample lead time to decide how best to comply with the new rules and what additional information should be provided.

We appreciate the opportunity to comment on the Proposed Regulations. Please feel free to contact me at [redacted] or [redacted] if you have any questions about our comments.

Very truly yours,

Amy E. Gerbick

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