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COMMERCIAL METALS CO
Form SC TO-T/A
December 19, 2011

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO/A
(RULE 14D-100) TENDER OFFER STATEMENT UNDER SECTION 14(D) (1) OR 13(E) (1)
OF THE SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO. 2)

COMMERCIAL METALS COMPANY
(NAME OF SUBJECT COMPANY (ISSUER))

IEP Metals Sub LLC
Icahn Partners LP
Icahn Partners Master Fund LP
Icahn Partners Master Fund II L.P.
Icahn Partners Master Fund III L.P.
High River Limited Partnership
Hopper Investments LLC
Barberry Corp.
Icahn Onshore LP
Icahn Offshore LP
Icahn Capital L.P.
IPH GP LLC
Icahn Enterprises Holdings L.P.
Icahn Enterprises G.P. Inc.
Beckton Corp.
Carl C. Icahn
(NAMES OF FILING PERSONS)*

COMMON STOCK, PAR VALUE \$0.01
(TITLE OF CLASS OF SECURITIES)

201723103
(CUSIP NUMBER OF CLASS OF SECURITIES)

KEITH L. SCHAITKIN, ESQ.
GENERAL COUNSEL
ICAHN CAPITAL LP
767 FIFTH AVENUE, 47TH FLOOR
NEW YORK, NEW YORK 10153
(212) 702-4380

(NAME, ADDRESS AND TELEPHONE NUMBER OF PERSON AUTHORIZED TO RECEIVE NOTICES
AND COMMUNICATIONS ON BEHALF OF FILING PERSONS)
CALCULATION OF FILING FEE

| TRANSACTION VALUATION: | AMOUNT OF FILING FEE: |
|------------------------|-----------------------|
| \$1,560,210,000* | \$ 178,800.07** |

* Calculated solely for purposes of determining the filing fee. The transaction value was calculated as follows: 104,014,000 shares of common stock of the Issuer multiplied by \$15 per share. The number of shares used in the transaction value calculation is based on the 115,539,000 shares stated to be issued and outstanding according to the Issuer in its Definitive Proxy Statement filed with the Securities and Exchange Commission on December 6, 2011, less 11,525,000 shares beneficially owned,

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as of December 9, 2011, by the Offeror and its affiliates.

** The amount of the filing fee was calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #3 for fiscal year 2012, issued September 29, 2011, by multiplying the transaction value by 0.0001146.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

| | |
|---------------------------|-------------------------------|
| Amount previously paid: | Filing Party: |
| \$178,800.07 | Icahn Enterprises Holdings LP |
| Form or registration no.: | Date Filed: |
| Schedule TO-T | December 9, 2011 |

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third party tender offer subject to Rule 14d-1
 going-private transaction subject to Rule 13e-3
 issuer tender offer subject to Rule 13e-4
 amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer:

COMBINED SCHEDULE TO AND SCHEDULE 13D

* Introductory Note: IEP Metals Sub LLC and Icahn Enterprises Holdings L.P. are co-bidders for all purposes in the Offer. IEP Metals Sub LLC is a wholly-owned subsidiary of Icahn Enterprises Holdings L.P.

This Amendment No. 2 amends and supplements the Tender Offer Statement on Schedule TO filed on December 9, 2011 (as amended by Amendment No. 1 filed on December 9, 2011, the "Schedule TO") relating to the offer by IEP Metals Sub LLC, a Delaware limited liability company ("IEP Metals Sub") and Icahn Enterprises Holdings L.P., a Delaware limited partnership ("Icahn Enterprises Holdings", and together with IEP Metals Sub, the "Offeror"), to purchase for cash all of the issued and outstanding shares of common stock, par value \$0.01 per share (the "Common Stock") of Commercial Metals Company, a Delaware corporation ("Commercial Metals"), including the associated rights issued pursuant to the Rights Agreement, dated as of July 30, 2011, between Commercial Metals and Broadridge Corporate Issuer Solutions, Inc., as Rights Agent, that are issued and outstanding (the "Rights", and together with the Common Stock, the "Shares") at a price of \$15.00 per Share, without interest and less any required withholding taxes, if any. Both IEP Metals Sub and Icahn Enterprises Holdings are co-bidders for all purposes in the Offer. Capitalized terms used herein and not otherwise defined have the respective meanings ascribed in the Schedule TO.

The Offer is subject to the terms and conditions set forth in the Offer to Purchase, dated December 9, 2011 (the "Offer to Purchase"). The Offer to Purchase, the related Letter of Transmittal (the "Letter of Transmittal") and Notice of Guaranteed Delivery, copies of which are attached hereto as Exhibits

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(a)(1)(i), (a)(1)(ii) and (a)(1)(iii), respectively, constitute the "Offer".

As permitted by General Instruction F to Schedule TO, the information set forth in the entire Offer to Purchase, the Letter of Transmittal and the Notice of Guaranteed Delivery, including all appendices, schedules, exhibits and annexes thereto, is hereby expressly incorporated by reference in response to Items 1 through 11 of this Schedule TO and is supplemented by the information specifically provided herein.

As permitted by General Instruction G to Schedule TO, this Schedule TO is also an amendment to the joint statement on Schedule 13D filed on July 28, 2011, as amended, by Icahn Enterprises Holdings, Icahn Partners LP, a limited partnership governed by the laws of Delaware, Icahn Partners Master Fund LP, a limited partnership governed by the laws of the Cayman Islands, Icahn Partners Master Fund II LP, a limited partnership governed by the laws of the Cayman Islands, Icahn Partners Master Fund III LP, a limited partnership governed by the laws of the Cayman Islands, High River Limited Partnership, a limited partnership governed by the laws of Delaware, Hopper Investments LLC, a limited liability company governed by the laws of Delaware, Barberry Corp., a corporation governed by the laws of Delaware, Icahn Onshore LP, a limited partnership governed by the laws of Delaware, Icahn Offshore LP, a limited partnership governed by the laws of Delaware, Icahn Capital LP, a limited partnership governed by the laws of Delaware, IPH GP LLC, a limited liability company governed by the laws of Delaware, Icahn Enterprises Holdings L.P., a limited partnership governed by the laws of Delaware, Icahn Enterprises G.P. Inc., a corporation governed by the laws of Delaware, Beckton Corp., a corporation governed by the laws of Delaware, and Carl C. Icahn (collectively, the "Icahn Entities").

ITEM 11. ADDITIONAL INFORMATION

(b) Other Material Information

Item 11 of the Schedule TO and the Offer to Purchase, to the extent incorporated by reference therein, are hereby amended and supplemented as set forth below:

- The penultimate paragraph of the "Introduction" of the Offer to Purchase is deleted in its entirety and replaced with the following:

"Except as otherwise stated in this Offer to Purchase, the information concerning the Company contained herein has been taken from or is based upon reports and other documents on file with the SEC or otherwise publicly available."

- The last paragraph of Section 7 "Certain Information Concerning the Company" is deleted in its entirety and replaced with the following:

"Except as otherwise stated in this Offer to Purchase, the information concerning the Company contained herein has been taken from or is based upon reports and other documents on file with the SEC or otherwise publicly available."

- The second paragraph of Section 8 "Certain Information Concerning the Offer" of the Offer to Purchase is deleted in its entirety and replaced with the following:

Icahn Enterprises Holdings is a Delaware limited partnership. Icahn Enterprises Holdings' general partner is Icahn Enterprises G.P. Inc. ("Icahn Enterprises GP"), a Delaware corporation. Icahn Enterprises Holdings' limited partner is Icahn Enterprises LP, ("Icahn Enterprises") a Delaware limited partnership. Icahn Enterprises GP is

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the general partner of Icahn Enterprises. Mr. Carl C. Icahn is the indirect holder of approximately 92.6% of the issued and outstanding depositary units representing limited partnership interests in Icahn Enterprises. Icahn Enterprises G.P. Inc. is 100% owned by Beckton Corp. ("Beckton"), a Delaware corporation. Beckton Corp. is 100% owned by Mr. Carl C. Icahn, a United States citizen. The business address of Mr. Icahn is c/o Icahn Associates Corp., 767 Fifth Avenue, 47th Floor, New York, New York, 10153, where the business phone number is (212) 702-4300. The business address of each of Icahn Enterprises Holdings, Icahn Enterprises L.P., Icahn Enterprises G.P. Inc. and Beckton Corp. is 767 Fifth Avenue, 47th Floor, New York, New York, 10153, where the business phone number is (212) 702-4300.

- The third paragraph of Section 8 "Certain Information Concerning the Offer" of the Offer to Purchase is amended by adding the following sentence to the end of such paragraph:

"Icahn Enterprises L.P., a master limited partnership, is a diversified holding company engaged in eight primary business segments: Investment, Automotive, Gaming, Railcar, Food Packaging, Metals, Real Estate and Home Fashion."

- The fourth paragraph of Section 8 "Certain Information Concerning the Offer" of the Offer to Purchase is amended by adding the following sentence to the end of such paragraph:

"Each of the executive officers and directors listed on Schedule I hereto is a United States citizen."

- The fifth paragraph of Section 8 "Certain Information Concerning the Offer" of the Offer to Purchase is amended by inserting the words "Icahn Enterprises," between the words "Icahn Enterprises Holdings," and "Icahn Enterprises GP".

- The sixth paragraph of Section 8 "Certain Information Concerning the Offer" of the Offer to Purchase is amended by inserting the words "Icahn Enterprises," between the words "Icahn Enterprises Holdings," and "Icahn Enterprises GP", in each place such words appear.

- Clause (i) of the second paragraph of Section 14 "Conditions of the Offer" of the Offer to Purchase is deleted in its entirety and replaced with the following:

"(i) any one or more of the Minimum Condition, the Poison Pill Condition or the Delaware 203 Condition is not satisfied or waived prior to the expiration of the Offer, or"

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

ICAHN PARTNERS LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER

Title: AUTHORIZED SIGNATORY

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ICAHN PARTNERS MASTER FUND LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

ICAHN PARTNERS MASTER FUND II LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

ICAHN PARTNERS MASTER FUND III LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

HIGH RIVER LIMITED PARTNERSHIP

BY: HOPPER INVESTMENTS LLC,
ITS GENERAL PARTNER

BY: BARBERRY CORP., ITS SOLE MEMBER

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

HOPPER INVESTMENTS LLC

BY: BARBERRY CORP., ITS SOLE MEMBER

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

BARBERRY CORP.

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

ICAHN ONSHORE LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

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ICAHN OFFSHORE LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

ICAHN CAPITAL LP

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

IPH GP LLC

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

ICAHN ENTERPRISES HOLDINGS L.P.
BY:ICAHN ENTERPRISES G.P. INC.,
ITS GENERAL PARTNER

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

IEP METALS SUB LLC
BY:ICAHN ENTERPRISES HOLDINGS L.P.,
ITS SOLE MEMBER
BY: ICAHN ENTERPRISES G.P. INC.,
ITS GENERAL PARTNER

By: /S/ DOMINICK RAGONE

Name: DOMINICK RAGONE
Title: CHIEF FINANCIAL OFFICER

ICAHN ENTERPRISES G.P. INC.

By: /S/ DOMINICK RAGONE

Name: DOMINICK RAGONE
Title: CHIEF FINANCIAL OFFICER

BECKTON CORP.

By: /S/ EDWARD MATTNER

Name: EDWARD MATTNER
Title: AUTHORIZED SIGNATORY

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/S/ CARL C. ICAHN

Name: CARL C. ICAHN

Date: December 19, 2011

EXHIBIT INDEX

| <u>EXHIBIT NO.</u> | <u>DESCRIPTION</u> |
|--------------------|--|
| (a) (1) (i) | Offer to Purchase, dated December 9, 2011* |
| (a) (1) (ii) | Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number) * |
| (a) (1) (iii) | Notice of Guaranteed Delivery* |
| (a) (1) (iv) | Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees* |
| (a) (1) (v) | Letter to Clients* |
| (a) (5) (i) | Summary Advertisement as published in the New York Times, by the Offeror, on December 9, 2011* |
| (a) (5) (ii) | Press Release of the Offeror, dated December 6, 2011 (incorporated by reference to Exhibit 1 to the Schedule TO-C filed by the Offeror with the Securities and Exchange Commission on December 6, 2011)* |
| (a) (5) (iii) | Press Release of Icahn Enterprises LP, dated December 9, 2011* |
| (b) | None. |
| (d) | None. |
| (g) | None. |
| (h) | None. |

* Previously Filed