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COMMERCIAL METALS CO

Form DFAN14A

January 10, 2012

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)  
of the Securities Exchange Act of 1934  
(Amendment No. \_\_)

Filed by the Registrant [ ]

Filed by a Party other than the Registrant [x]

Check the appropriate box:

- [ ] Preliminary Proxy Statement  
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))  
[ ] Definitive Proxy Statement  
[ ] Definitive Additional Materials  
[X] Soliciting Material Pursuant to 240.14a-12

Commercial Metals Company  
(Name of Registrant as Specified In Its Charter)

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  
James Unger  
Steve Mongillo  
George Hebard

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (check the appropriate box):

[X] No fee required.

[ ] Fee computed on table below per Exchange Act Rule 14a-6(i)(4) and 0-11.

- 1) Title of each class of securities to which transaction applies:
- 2) Aggregate number of securities to which transaction applies:
- 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- 4) Proposed maximum aggregate value of transaction:

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5) Total fee paid:

[ ] Fee paid previously with preliminary materials.

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

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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. 7)

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

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(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, 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:  
\$178,800.07  
Form or registration no.:  
Schedule TO-T

Filing Party:  
Icahn Enterprises Holdings LP  
Date Filed:  
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 transactions 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. 7 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, Amendment No. 2 filed on December 19, 2011, Amendment No. 3 filed on December 27, 2011, Amendment No. 4 filed on January 5, 2012, Amendment No. 5 filed on January 5, 2012 and Amendment No. 6 filed on January 6, 2012, 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

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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 (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.

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 second paragraph in the subsection titled "Antitrust" in Section 15 - "Certain Legal Matters" of the Offer to Purchase is amended and supplemented to include the following new sentence at the end of such paragraph:

"Early termination of the waiting period for the Offer under the HSR Act was granted effective January 6, 2012."

### SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify

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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

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  
-----

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Name: EDWARD MATTNER  
Title: AUTHORIZED SIGNATORY

ICAHN ONSHORE LP

By: /S/ EDWARD MATTNER  
-----  
Name: EDWARD MATTNER  
Title: AUTHORIZED SIGNATORY

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/ DOMINICK RAGONE  
-----  
Name: DOMINICK RAGONE  
Title: CHIEF FINANCIAL OFFICER

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

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-----  
Name: DOMINICK RAGONE  
Title: CHIEF FINANCIAL OFFICER

BECKTON CORP.

By: /S/ EDWARD MATTNER  
-----  
Name: EDWARD MATTNER  
Title: AUTHORIZED SIGNATORY

/S/ CARL C. ICAHN  
-----  
Name: CARL C. ICAHN

Date: January 9, 2012

EXHIBIT INDEX

EXHIBIT NO. -----	DESCRIPTION -----
(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*
(a) (5) (iv)	Press Release of Icahn Enterprises LP, dated December 27,2011*
(a) (5) (v)	Press Release of Icahn Enterprises LP, dated January 4, 2012*
(a) (5) (vi)	Press Release of Icahn Enterprises LP, dated January 5, 2012*
(a) (5) (vii)	Press Release of Icahn Enterprises LP, dated January 6,2012*
(b)	None.
(d)	None.
(g)	None.

(h) None.

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\* Previously Filed