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COMMERCIAL METALS CO  
Form DFAN14A  
December 02, 2011

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:

On December 2, 2011, entities affiliated with Carl C. Icahn (the "Icahn Entities") delivered a letter to the Board of Directors of Commercial Metals Company (the "Company") and issued a press release relating to the Company. The press release, which includes the full text of the letter, is incorporated herein and attached hereto as Exhibit 1.

SECURITY HOLDERS ARE ADVISED TO READ THE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO THE SOLICITATION OF PROXIES BY CARL C. ICAHN, JAMES UNGER, STEVE MONGILLO, GEORGE HEBARD, HIGH RIVER LIMITED PARTNERSHIP, HOPPER INVESTMENTS LLC, BARBERRY CORP., ICAHN PARTNERS LP, ICAHN PARTNERS MASTER FUND LP, ICAHN PARTNERS MASTER FUND II L.P., ICAHN PARTNERS MASTER FUND III L.P., ICAHN ENTERPRISES G.P. INC., ICAHN ENTERPRISES HOLDINGS L.P., IPH GP LLC, ICAHN CAPITAL L.P., ICAHN ONSHORE LP, ICAHN OFFSHORE LP, BECKTON CORP. AND CERTAIN OF THEIR RESPECTIVE AFFILIATES FROM THE STOCKHOLDERS OF COMMERCIAL METALS COMPANY FOR USE AT ITS 2012 ANNUAL MEETING WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION, INCLUDING INFORMATION RELATING TO THE PARTICIPANTS IN SUCH PROXY SOLICITATION. WHEN COMPLETED, A DEFINITIVE PROXY STATEMENT AND A FORM OF PROXY WILL BE MAILED TO STOCKHOLDERS OF COMMERCIAL METALS COMPANY AND WILL ALSO BE AVAILABLE AT NO CHARGE AT THE SECURITIES AND EXCHANGE COMMISSION'S WEBSITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov). INFORMATION RELATING TO THE PARTICIPANTS IN A POTENTIAL PROXY SOLICITATION IS CONTAINED IN EXHIBIT 2 TO THE SCHEDULE 14A FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON OCTOBER 19, 2011.

EXHIBIT 1

Press Release

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FOR IMMEDIATE RELEASE

CARL C. ICAHN ISSUES OPEN LETTER  
TO BOARD OF DIRECTORS  
OF COMMERCIAL METALS COMPANY

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New York, New York, December 2, 2011  
Contact: Susan Gordon (212) 702-4309

Carl C. Icahn, Chairman of the Board of the general partner of Icahn Enterprises LP (NYSE: IEP), issued the following open letter this afternoon to the Board of Directors of Commercial Metals Company.

The letter is as follows:

CARL C. ICAHN

December 2, 2011

Board of Directors  
Commercial Metals Company  
6565 North MacArthur Boulevard, Suite 800  
Irving, Texas 75039

Ladies and Gentlemen:

On Monday, we informed you and publicly announced that Icahn Enterprises LP would purchase Commercial Metals Company at \$15 per share, in cash, without any financing or due diligence conditions. Disappointingly, it is Friday afternoon, the week is over, and we have still not heard from you.

We are sure that you are keenly aware that since our announcement, over 22 million of the Company's shares have traded. This represents over 19% of the Company's outstanding shares, and is 200% higher than the average weekly trading volume over the past 52 weeks. To allow your shareholders to trade such heavy volumes without responding to our offer is completely irresponsible - but wholly consistent with the pattern of irresponsibility demonstrated by the Company over the years.

Icahn Enterprises (which currently has, on a consolidated basis, \$22.4 billion of assets, including in excess of \$13 billion in liquid assets, which are cash and marketable securities) made a legitimate offer to acquire your Company, and to be clear, we continue to be immediately ready to meet with you to document the transaction. We are not asking for any due diligence or financing conditions. All that we are asking is that you allow your shareholders to decide if they wish to sell their company.

We have received a number of inquiries from shareholders this week, as we are sure you have too. Shareholders deserve an answer; it is incumbent on this Board to respond to our offer. To that end, if you continue to disregard your duties and have not contacted us by 9:00 a.m., New York City time, on Monday, December 5, 2011, to schedule a meeting to discuss our offer, please be forewarned that we intend to take matters into our own hands.

Carl C. Icahn

IMPORTANT INFORMATION: ICAHN ENTERPRISES LP HAS NOT YET COMMENCED THE TENDER OFFER REFERRED TO IN THIS PRESS RELEASE. UPON THE COMMENCEMENT OF ANY TENDER OFFER, ICAHN ENTERPRISES LP OR ONE OF ITS SUBSIDIARIES WILL FILE A TENDER OFFER STATEMENT WITH THE SECURITIES AND EXCHANGE COMMISSION. THOSE DOCUMENTS WILL CONTAIN IMPORTANT INFORMATION ABOUT THE TENDER OFFER AND SHOULD BE READ BY SECURITY HOLDERS. IF THE TENDER OFFER IS COMMENCED, SECURITY HOLDERS WILL BE ABLE TO OBTAIN AT NO CHARGE (I) THE TENDER OFFER STATEMENT AND OTHER DOCUMENTS WHEN THEY BECOME AVAILABLE ON THE SECURITIES AND EXCHANGE COMMISSION'S WEBSITE

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AT [HTTP://WWW.SEC.GOV](http://www.sec.gov), AND (II) THE OFFER TO PURCHASE AND ALL RELATED DOCUMENTS FROM THE OFFERORS.

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