

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

COMMERCIAL METALS CO  
Form DFAN14A  
October 19, 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:
- 5) Total fee paid:

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

- [ ] 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 October 19, 2011, entities affiliated with Carl C. Icahn (the "Icahn Entities") delivered a notice (the "Nomination Letter") to the Corporate Secretary of Commercial Metals Company (the "Company") of their intent to nominate James Unger, Steve Mongillo and George Hebard for election to the board of directors of the Company at the 2012 annual meeting of stockholders of the Issuer (the "2012 Annual Meeting"), or a special meeting of stockholders of the Issuer called for a similar person. The Icahn Entities also stated in the Nomination Letter their intent to propose other business to be transacted at the 2012 Annual Meeting, including a precatory proposal that the Company redeem its poison pill and a Bylaw amendment to require stockholder approval in order to adopt a poison pill. The Nomination Letter, including the full text of the proposals, 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 HERETO.

EXHIBIT 1

Notice of Nominations of Persons for Election to the Board of Directors  
And Proposal of Other Business to be Transacted by the Stockholders at the  
2012 Annual Meeting of Stockholders of Commercial Metals Company

-----

HIGH RIVER LIMITED PARTNERSHIP  
c/o Icahn Associates Corp.  
767 Fifth Avenue, 46th Floor  
New York, NY 10153

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

October 18, 2011

VIA HAND DELIVERY, FEDERAL EXPRESS, FACSIMILE AND EMAIL  
-----

Commercial Metals Company  
6565 North MacArthur Boulevard, Suite 800  
Irving, Texas 75039  
Attention: Ann J. Bruder, Corporate Secretary

Re: Notice (this "Notice") of Nominations of Persons for Election to the Board of Directors and the Proposal of Other Business to be Transacted by the Stockholders at the 2012 Annual Meeting of Stockholders of Commercial Metals Company (the "Corporation")  
-----

Ladies and Gentlemen:

High River Limited Partnership, a Delaware limited partnership ("High River" or the "Record Holder") hereby submits this Notice on the date hereof pursuant to the requirements (the "Bylaw Requirements") set forth in the Second Amended and Restated Bylaws of the Corporation (the "Bylaws"), of its intent to make the Proposals (as defined below) and to nominate each person on the Slate (as defined below) for election to the board of directors of the Corporation at the 2012 annual meeting of Stockholders of the Corporation (the "Annual Meeting"), or a special meeting of Stockholders of the Corporation called for a similar purpose. This Notice is submitted by the Record Holder and on behalf of the Direct Beneficial Owners (as defined below) and the Beneficial Owners (as defined in Annex A).

As of the close of business on October 18, 2011, (i) High River represents that it is the holder of record of, and is entitled to vote, 1000 shares of Common Stock, \$0.01 par value per share, of the Corporation (the "Shares") and that it is the direct beneficial owner of 2,304,999 Shares (including the 1000 Shares of which High River is the stockholder of record); (ii) Icahn Partners LP, a Delaware limited partnership ("Icahn Partners"), represents that it is the direct beneficial owner of 3,531,955 Shares and that it is not the holder of record of any Shares; (iii) Icahn Partners Master Fund LP, a Cayman Islands exempted limited partnership ("Icahn Master"), represents that it is the direct beneficial owner of 3,808,353 Shares and that it is not the holder of record of any Shares; (iv) Icahn Partners Master Fund II L.P., a Cayman Islands exempted limited partnership ("Icahn Master II"), represents that it is the direct beneficial owner of 1,310,448 Shares and that it is not the holder of record of any Shares; (v) Icahn Partners Master Fund III L.P., a Cayman Islands exempted limited partnership ("Icahn Master III" and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Direct Beneficial Owners"), represents that it is the direct beneficial owner of 569,245 Shares and that it is not the holder of record of any Shares, in each case, as further described in Annex A. Carl C. Icahn, by virtue of his relationship to High River, Icahn Partners, Icahn Master, Icahn Master II and Icahn Master III is deemed to beneficially own (as that term is defined in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) the Shares which High River, Icahn Partners, Icahn Master, Icahn Master II and Icahn Master III directly beneficially own, as further described in Annex A.

The address of Icahn Partners is 767 Fifth Avenue, 47th Floor, New York, NY 10153. The address of Icahn Master is c/o Walkers SPV Limited, P.O. Box 908GT, 87 Mary Street, George Town, Grand Cayman, Cayman Islands. The address of Icahn Master II is c/o Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9002, Cayman Islands. The address of Icahn Master III is c/o

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9002, Cayman Islands. The address of High River is 767 Fifth Avenue, 46th Floor, New York, NY 10153. Each of Icahn Master, Icahn Master II, Icahn Master III, Icahn Partners and High River is primarily engaged in the business of investing in securities. High River believes that its name and address set forth above is the name and address for the Record Holder that appears on the Corporation's books.

### DIRECTOR NOMINEES

-----

The Record Holder hereby represents that it intends to appear in person or by proxy at the Annual Meeting to nominate for election to the board of directors of the Corporation (the "Board") the following persons (each, a "Nominee" and collectively, the "Slate"):

James Unger  
Steve Mongillo  
George Hebard

Mr. Unger has over 30 years of experience in the railcar industry and has extensive knowledge of the operational issues facing industrial companies. Mr. Mongillo has over 25 years of experience in the financial industry and has a strong understanding of the complex business and financial issues encountered by large complex companies. Mr. Hebard has a strong record as a sophisticated investor and has a broad understanding of the operational, financial and strategic issues facing public and private companies. The Record Holder believes that these individuals' knowledge of operations, investments and corporate finance will add to the business expertise and leadership of the Board. The Record Holder also believes that each Nominee is a strong stockholder-oriented individual who will help represent the best interests of the Corporation's stockholders.

The Record Holder hereby further represents that it intends to appear in person or by proxy at the Annual Meeting to make the following proposals (the "Proposals") for consideration by the Corporation's Stockholders:

### PROPOSAL 1

-----

To adopt a resolution of the Corporation's Stockholders strongly urging the Board to immediately redeem any and all outstanding Rights (as defined in the Rights Agreement (as defined below)) issued pursuant to that certain Rights Agreement, dated as of July 30, 2011, between the Corporation and Broadridge Corporate Issuer Solutions, Inc. (the "Rights Agreement" or the "Poison Pill") in accordance with Section 23 of the Rights Agreement and to terminate the Rights Agreement immediately thereafter.

The following is the text of the proposed resolution:

"RESOLVED, that the Stockholders of the Corporation hereby strongly urge the Board of Directors of the Corporation (the "Board") to immediately redeem (the "Redemption") any and all outstanding Rights (as defined in the Rights Agreement (as defined below)) issued pursuant to that certain Rights Agreement, dated as of July 30, 2011, between the Corporation and Broadridge Corporate Issuer Solutions, Inc. (the "Rights Agreement") in accordance with Section 23 of the Rights Agreement and to terminate the Rights Agreement immediately thereafter; and be it further

RESOLVED, that the Stockholders of the Corporation hereby strongly urge the Board to not establish any conditions to the Redemption, other than as specifically required by and set forth in the Rights Agreement; and

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

be it further

RESOLVED, that the Stockholders of the Corporation hereby strongly urge the Board to immediately order the Redemption and give immediate public notice of the Redemption."

PROPOSAL 2  
-----

To adopt a resolution that would amend the Bylaws to require stockholder approval in order to authorize, establish, adopt, or amend any rights plan, poison pill or similar plan.

The following is the text of the proposed resolution:

"RESOLVED, that the Second Amended and Restated Bylaws of the Corporation shall be amended to add the following provisions:

ARTICLE XII  
POISON PILLS

- (a) In addition to any affirmative vote of stockholders required by any provision of law, the restated certificate of incorporation of the corporation or these Bylaws, the corporation shall not authorize, establish, adopt, or amend any Poison Pill (as defined in subsection (b) below) without the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors, voting as a single class.
- (b) For purposes of these Bylaws, a "Poison Pill" shall mean any plan or arrangement of the sort commonly referred to as a "rights plan" or "stockholder rights plan" or "shareholder rights plan" or "poison pill" that is designed to prevent or make more difficult a hostile takeover of the corporation by increasing the cost to a potential acquirer in such a takeover either through the issuance of new rights, shares of common stock or preferred stock or any other security or device that may be issued to stockholders of the corporation other than ratably to all stockholders of the corporation that carry severe redemption provisions, favorable purchase provisions or otherwise.
- (c) Notwithstanding Section 7 "Amendment" of Article X of these Bylaws, no provision of this Article XII may be amended, modified, repealed or superseded without the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors, voting as a single class."

PROPOSAL 3  
-----

To adopt a resolution that would repeal any provision of the Bylaws in effect at the time of the Annual Meeting that was not included in the Bylaws as publicly filed with the Securities and Exchange Commission prior to October 18, 2011, and is inconsistent with any of the foregoing proposals that are approved by the stockholders at the Annual Meeting.

The Record Holder is not aware of any such provision of the Bylaws that has become effective, but it is possible that following the date of this Notice and

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

prior to the adoption of this resolution such a provision could become effective.

The following is the text of the proposed resolution:

"RESOLVED, that any provision of the Second Amended and Restated Bylaws of Commercial Metals Company as of the effectiveness of this resolution that was not included in the Bylaws of Commercial Metals Company as publicly filed with the Securities and Exchange Commission prior to October 18, 2011, and is inconsistent with any of the proposals approved by stockholders at the 2012 Annual Meeting of the Stockholders of Commercial Metals Company, be and hereby are repealed."

Although not binding on the Board, the Record Holder is bringing Proposal 1 for consideration at the Annual Meeting because the Record Holder believes that the Corporation's stockholders should have the ability to indicate to the Board that stockholders believe that the Poison Pill is not in their best interests. The Record Holder is bringing Proposal 2 for consideration at the Annual Meeting because the Record Holder believes that poison pills should not be authorized, established, adopted, or amended without stockholder approval. The Record Holder is bringing Proposal 3 for consideration at the Annual Meeting because the Record Holder believes that amendments to the Bylaws that have not been publically disclosed prior to the date of this Notice should not frustrate the purposes of the various proposals being made by the Record Holder.

In this Notice: (i) certain information relating to the Direct Beneficial Owners and the Beneficial Owner(s) (as defined in Annex A) is set forth in the body of this Notice (including the footnotes hereto) and Annex A; (ii) certain information relating to each Nominee is set forth in the body of this Notice and Annex B; and (iii) the written consent of each Nominee to being named in the proxy statement as a nominee and to serving as a director of the Corporation if elected, is attached as Annex C. The Nominees are also party to an agreement substantially in the form attached hereto as Annex D, pursuant to which an affiliate of the Direct Beneficial Owners has agreed to pay certain fees to Mr. Unger and Mr. Mongillo, and to indemnify each of the Nominees with respect to certain costs incurred by him in connection with the proxy contest relating to the Annual Meeting (the "Nominee Agreement").

Each Direct Beneficial Owner and Beneficial Owner hereby represents that it will deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting power of all of the shares of capital stock required under applicable law to carry, approve or adopt (in person or by proxy) the Proposals and to elect the Slate to the Board.

Each Nominee, Direct Beneficial Owner and Beneficial Owner has an interest in the Proposals and the election of directors at the Annual Meeting: (i) directly and/or indirectly through the beneficial ownership (if any) of Shares, as described on Annex A, and any applicable attachments thereto; and (ii) with respect to each of the Nominees pursuant to the Nominee Agreement.

With respect to each Nominee, other than as disclosed in this Notice, (i) such Nominee is not, and, within the past year, was not a party to any contract, arrangement or understanding with any person with respect to any securities of the Corporation, including, but not limited to, joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies; and (ii) neither such Nominee nor any of such Nominee's associates have any arrangement or understanding with any person with respect to (A) any future employment by the Corporation or its affiliates or (B) any future transactions to which the Corporation or any of its affiliates will or may be a party.

With respect to each Direct Beneficial Owner and Beneficial Owner, other

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

than as disclosed in this Notice, (i) neither such Direct Beneficial Owner nor such Beneficial Owner is, or was, within the past year, a party to any contract, arrangement or understanding with any person with respect to any securities of the Corporation, including, but not limited to, joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies; and (ii) neither such Direct Beneficial Owner, Beneficial Owner nor any of their respective associates have any arrangement or understanding with any person with respect to (A) any future employment by the Corporation or its affiliates or (B) any future transactions to which the Corporation or any of its affiliates will or may be a party.

Mr. Hebard is employed by an entity affiliated with Carl C. Icahn. Mr. Unger is Vice-Chairman and a director of the Board of Directors of an entity affiliated with Carl C. Icahn.

With respect to each Nominee, such Nominee is independent under the independence standards applicable to the Corporation under (i) paragraph (a)(1) of Item 407 of Regulation S-K and (ii) the New York Stock Exchange listing standards.

The Annexes and all attachments thereto are hereby incorporated into and made a part of this Notice. Accordingly, all matters disclosed in any part of this Notice, including the Annexes and all attachments thereto should be deemed disclosed for all purposes of this Notice. All upper case terms appearing in the Annexes and all attachments thereto that are not defined in such Annexes and attachments shall have the meanings given in the body of this Notice or the Annexes and all attachments thereto, as applicable.

Unless expressly indicated otherwise herein, information is set forth herein as of the close of business on October 18, 2011. Neither the delivery of this Notice nor any delivery by any Direct Beneficial Owner, Beneficial Owner, or Nominee of additional information to the Corporation from and after the date hereof shall be deemed to constitute an admission by any Direct Beneficial Owner, Beneficial Owner, Nominee or any of their respective affiliates (if any) that such delivery is required or that each and every item or any item of information is required or as to the legality or enforceability of any notice requirement or any other matter, or a waiver by any Direct Beneficial Owner, Beneficial Owner, Nominee or any of their respective affiliates (if any) of their right to contest or challenge, in any way, the validity or enforceability of any notice requirement or any other matter (including actions taken by the Board in anticipation of, or following receipt of, this Notice). Furthermore, this Notice assumes that the Board will nominate a total of three director nominees for election to the Board at the Annual Meeting and if the Board increases the number of directors to be nominated and elected at the Annual Meeting or a special meeting called for a similar purpose, the Record Holder reserves the right to add additional director nominees in respect of each such additional directorship. In the event any statement or other information in this Notice is not correct, or to the extent any applicable information has been omitted from this Notice, the Direct Beneficial Owners, Beneficial Owners and Nominees reserve the right to correct and/or supplement any such statement or other information set forth in this Notice.

[Signature page follows]

Very truly yours,

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, its general partner

By: Barberry Corp., its sole member

By: \_\_\_\_\_

Name: Edward E. Mattner

Title: Authorized Signatory

[Signature page to Stockholders' Notice of Nominations of Persons for Election to the Board of Directors and the Proposal of Other Business to be Transacted by the Stockholders at the 2012 Annual Meeting of Stockholders of Commercial Metals Company]

ANNEX A

CERTAIN INFORMATION ABOUT BENEFICIAL OWNERSHIP

NAME: Carl C. Icahn

AGE: 75

BUSINESS ADDRESS: 767 Fifth Avenue, 47th Floor  
New York, New York 10153

RESIDENCE ADDRESS: [Address redacted]

PRINCIPAL OCCUPATION OR EMPLOYMENT: See below

CITIZENSHIP: United States of America

Mr. Icahn has an interest in the election of directors at the Annual Meeting and the Proposals indirectly through the beneficial ownership of securities, as described below.

Mr. Icahn has served as chairman of the board and a director of Starfire Holding Corporation, a privately held holding company, and chairman of the board and a director of various subsidiaries of Starfire, since 1984. Since August 2007, through his position as Chief Executive Officer of Icahn Capital LP, a wholly owned subsidiary of Icahn Enterprises L.P. ("IEP"), and certain related entities, Mr. Icahn's principal occupation is managing private investment funds, including Icahn Partners, Icahn Master, Icahn Master II and Icahn Master III. From November 2004 through August 2007, Mr. Icahn conducted this occupation through his entities CCI Onshore Corp. and CCI Offshore Corp. Since November 1990, Mr. Icahn has been chairman of the board of Icahn Enterprises G.P. Inc., the general partner of IEP. IEP is a diversified holding company engaged in a variety of businesses, including investment management, automotive, metals, real estate, home fashion, railcar, casino gaming and food packaging. Since March 2010, Mr. Icahn has been the chairman of the board of directors of Tropicana Entertainment Inc., a company that is primarily engaged in the business of



## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

owning and operating casinos and resorts. Mr. Icahn has served as chairman of the board and as a director of American Railcar Industries, Inc., a company that is primarily engaged in the business of manufacturing covered hopper and tank railcars, since 1994. Mr. Icahn has been chairman of the board and a director of XO Holdings, Inc., a telecommunications services provider, since February 2006 and of its predecessor from January 2003 to February 2006. Since September 2011, Mr. Icahn has been the President of XO Holdings, Inc. In October 2005, Mr. Icahn became a director of WestPoint International, Inc., a manufacturer of bed and bath home fashion products. Mr. Icahn was chairman of the board and president of Icahn & Co., Inc., a registered brokerdealer and a member of the National Association of Securities Dealers, from 1968 to 2005. From October 1998 through May 2004, Mr. Icahn was the president and a director of Stratosphere Corporation, the owner and operator of the Stratosphere Hotel and Casino in Las Vegas, Nevada, which, until February 2008, was a subsidiary of IEP. From September 2000 to February 2007, Mr. Icahn served as the chairman of the board of GB Holdings, Inc., which owned an interest in Atlantic Coast Entertainment Holdings, Inc., the owner and operator of The Sands Hotel and Casino in Atlantic City until November 2006. From September 2006 to November 2008, Mr. Icahn was a director of ImClone Systems Incorporated, a biopharmaceutical company, and from October 2006 to November 2008, he was the chairman of the board of ImClone. From July 1993 to July 2010, Mr. Icahn served as a director of Cadus Corporation, a company engaged in the ownership and licensing of yeast based drug discovery technologies. From May 2005 to January 2010, Mr. Icahn served as a director of Blockbuster Inc., a provider of in-home movie rental and game entertainment. Mr. Icahn was a director of WCI Communities, Inc., a homebuilding company, from August 2007 to September 2009 and served as chairman of the board of WCI from September 2007 to September 2009. In December 2007, Mr. Icahn became a Director of FederalMogul Corporation, a supplier of automotive products, and since January 2008, has been the Chairman of the Board of FederalMogul. Mr. Icahn was a director of Motricity, Inc., a company that provides mobile content services and solutions, from April 2008 to January 2010. Mr. Icahn was a director of Yahoo! Inc., a company that provides Internet services to users, advertisers, publishers and developers worldwide, from August 2008 to October 2009. Mr. Icahn received his B.A. from Princeton University.

### SECURITY OWNERSHIP OF DIRECT BENEFICIAL OWNERS

(1) TITLE OF CLASS -----	(2) NAME OF BENEFICIAL OWNER (1) -----	(3) AMOUNT OF BENEFICIAL OWNERSHIP -----	(4) PERCENT OF CLASS (2) -----
Common Stock, par value \$0.01 per share ("Shares")	High River	2,304,999	2.00%
Shares	Icahn Partners	3,531,955	3.06%
Shares	Icahn Master	3,808,353	3.30%
Shares	Icahn Master II	1,310,448	1.13%
Shares	Icahn Master III	569,245	0.49%

(1) Please note that each Holder listed in this table is, as of the date of this Notice, the direct beneficial owner of the Shares set forth under the heading "(3) Amount of Beneficial Ownership" and that indirect beneficial ownership of Shares is described below in the text of this Annex A under the heading "Description of Beneficial Ownership and Beneficial Owners."

(2) Please note that percentages of ownership set forth in this column were calculated based on the 115,533,540 Shares stated to be outstanding as of

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

July 1, 2011 by the Corporation in the Corporation's Form 10-Q filed for the quarterly period ended May 31, 2011.

### DESCRIPTION OF BENEFICIAL OWNERSHIP AND BENEFICIAL OWNERS

Barberry Corp., a Delaware corporation ("Barberry"), is the sole member of Hopper Investments LLC, a Delaware limited liability company ("Hopper"), which is the general partner of High River. Beckton Corp., a Delaware corporation ("Beckton") is the sole stockholder of Icahn Enterprises G.P. Inc., a Delaware corporation ("Icahn Enterprises GP"), which is the general partner of Icahn Enterprises Holdings L.P., a Delaware limited partnership ("Icahn Holdings"). Icahn Holdings is the sole member of IPH GP LLC, a Delaware limited liability company ("IPH"), which is the general partner of Icahn Capital L.P., a Delaware limited partnership ("Icahn Capital"). Icahn Capital is the general partner of each of Icahn Onshore LP, a Delaware limited partnership ("Icahn Onshore") and Icahn Offshore LP, a Delaware limited partnership ("Icahn Offshore"). Icahn Onshore is the general partner of Icahn Partners. Icahn Offshore is the general partner of each of Icahn Master, Icahn Master II and Icahn Master III. Each of Barberry and Beckton is 100 percent owned by Carl C. Icahn ("Mr. Icahn," and collectively with Barberry, Hopper, Beckton, Icahn Enterprises GP, Icahn Holdings, IPH, Icahn Capital, Icahn Onshore, Icahn Offshore, the "Beneficial Owners" and each of them a "Beneficial Owner." As such, Mr. Icahn is in a position indirectly to determine the investment and voting decisions made by each of the Direct Beneficial Owners. In addition, Mr. Icahn is the indirect holder of approximately 92.6% of the outstanding depository units representing limited partnership interests in Icahn Enterprises L.P. ("Icahn Enterprises"). Icahn Enterprises GP is the general partner of Icahn Enterprises, which is the sole limited partner of Icahn Holdings.

The principal business address of each of (i) Icahn Offshore, Icahn Onshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP and Beckton is White Plains Plaza, 445 Hamilton Avenue - Suite 1210, White Plains, NY 10601 and (ii) Mr. Icahn, Barberry and Hopper is c/o Icahn Capital LP, 767 Fifth Avenue, 47th Floor, New York, NY 10153.

Barberry is primarily engaged in the business of serving as the sole member of Hopper and investing in securities. Hopper is primarily engaged in the business of serving as the general partner of High River and investing in securities. Icahn Offshore is primarily engaged in the business of serving as the general partner of each of Icahn Master, Icahn Master II and Icahn Master III. Icahn Onshore is primarily engaged in the business of serving as the general partner of Icahn Partners. Icahn Capital is primarily engaged in the business of serving as the general partner of each of Icahn Offshore and Icahn Onshore. IPH is primarily engaged in the business of serving as the general partner of Icahn Capital. Icahn Holdings is primarily engaged in the business of holding direct or indirect interests in various operating businesses. Icahn Enterprises GP is primarily engaged in the business of serving as the general partner of each of Icahn Enterprises L.P. and Icahn Holdings. Beckton is primarily engaged in the business of holding the capital stock of Icahn Enterprises GP. Mr. Carl C. Icahn is primarily engaged in serving as (i) Chief Executive Officer of Icahn Capital LP, a wholly owned subsidiary of Icahn Enterprises L.P., through which Mr. Icahn manages various private investment funds, including Icahn Partners, Icahn Master, Icahn Master II and Icahn Master III, (ii) Chairman of the Board of Icahn Enterprises GP, the general partner of Icahn Enterprises L.P., a New York Stock Exchange listed diversified holding company engaged in a variety of businesses, including investment management, automotive, casino gaming, railcar, food packaging, metals, real estate and home fashion, and (iii) Chairman of the Board and a director of Starfire Holding Corporation ("Starfire"), a holding company engaged in the business of investing in and/or holding securities of various entities, and as Chairman of the Board

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

and a director of various of Starfire's subsidiaries.

The Direct Beneficial Owners and the Beneficial Owners may be deemed to beneficially own, in the aggregate, 11,525,000 Shares, representing approximately 9.98% of the Corporation's outstanding Shares (based upon the 115,533,540 Shares stated to be outstanding as of July 1, 2011 by the Corporation in the Corporation's Form 10-Q filed for the quarterly period ended May 31, 2011).

High River has sole voting power and sole dispositive power with regard to 2,304,999 Shares. Each of Hopper, Barberry and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Partners has sole voting power and sole dispositive power with regard to 3,531,955 Shares. Each of Icahn Onshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Master has sole voting power and sole dispositive power with regard to 3,808,353 Shares. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Master II has sole voting power and sole dispositive power with regard to 1,310,448 Shares. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Master III has sole voting power and sole dispositive power with regard to 569,245 Shares. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares.

Each of Hopper, Barberry and Mr. Icahn, by virtue of their relationships to High River, may be deemed to indirectly beneficially own the 2,304,999 Shares which High River directly beneficially owns. Each of Icahn Onshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn, by virtue of their relationships to Icahn Partners, may be deemed to indirectly beneficially own the 3,531,955 Shares which Icahn Partners directly beneficially owns. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn, by virtue of their relationships to Icahn Master, Icahn Master II and Icahn Master III, may be deemed to indirectly beneficially own the 5,688,046 Shares which Icahn Master, Icahn Master II and Icahn Master III directly beneficially own.

### TWO YEAR SUMMARY TABLE:

The following table indicates the date of each purchase and sale of Shares, as well as the exercise of call options, by Mr. Icahn and his affiliates within the past two years, and the number of shares in each such purchase and sale, or exercise of call options.

NAME	DATE	SHARES PURCHASED/ CALL OPTIONS EXERCISED
----	----	-----
High River	8/12/2010	1,000.00
High River	8/12/2010	8,560.00
High River	8/13/2010	180,000.00
High River	8/16/2010	35,826.00
High River	8/17/2010	80.00
High River	8/18/2010	420.00
High River	8/19/2010	2,340.00
High River	8/20/2010	15,060.00
High River	8/23/2010	40,000.00
High River	8/24/2010	68,837.00

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

High River	8/25/2010	50,020.00
High River	8/26/2010	90,740.00
High River	8/27/2010	55,040.00
High River	8/30/2010	28,540.00
High River	8/31/2010	37,100.00
High River	9/1/2010	640.00
High River	9/2/2010	60.00
High River	10/29/2010	2,920.00
High River	11/10/2010	30,000.00
High River	11/11/2010	8,580.00
High River	11/12/2010	117,483.00
High River	11/15/2010	60,000.00
High River	11/16/2010	60,000.00
High River	11/17/2010	30,000.00
High River	6/17/2011	47,593.00
High River	7/15/2011	7,000.00
High River	9/1/2011	1,327,160.00 (3)
Icahn Partners	8/12/2010	14,566.00
Icahn Partners	8/13/2010	274,247.00
Icahn Partners	8/16/2010	54,585.00
Icahn Partners	8/17/2010	122.00
Icahn Partners	8/18/2010	640.00
Icahn Partners	8/19/2010	3,565.00
Icahn Partners	8/20/2010	22,946.00
Icahn Partners	8/23/2010	60,944.00
Icahn Partners	8/24/2010	104,879.00
Icahn Partners	8/25/2010	76,210.00
Icahn Partners	8/26/2010	138,251.00
Icahn Partners	8/27/2010	83,859.00
Icahn Partners	8/30/2010	43,483.00
Icahn Partners	8/31/2010	56,526.00
Icahn Partners	9/1/2010	171.00
Icahn Partners	9/2/2010	98.00
Icahn Partners	10/29/2010	5,720.00
Icahn Partners	11/10/2010	47,547.00
Icahn Partners	11/11/2010	13,103.00
Icahn Partners	11/12/2010	179,417.00
Icahn Partners	11/15/2010	91,630.00
Icahn Partners	11/16/2010	91,630.00
Icahn Partners	11/17/2010	45,815.00
Icahn Partners	6/17/2011	72,902.00
Icahn Partners	7/15/2011	10,726.00
Icahn Partners	9/1/2011	2,038,373.00 (3)
Icahn Master	8/12/2010	16,522.00
Icahn Master	8/13/2010	311,077.00
Icahn Master	8/16/2010	61,916.00
Icahn Master	8/17/2010	139.00
Icahn Master	8/18/2010	725.00
Icahn Master	8/19/2010	4,043.00
Icahn Master	8/20/2010	26,029.00
Icahn Master	8/23/2010	69,127.00
Icahn Master	8/24/2010	118,964.00
Icahn Master	8/25/2010	86,445.00
Icahn Master	8/26/2010	156,817.00
Icahn Master	8/27/2010	95,121.00
Icahn Master	8/30/2010	49,324.00
Icahn Master	8/31/2010	64,116.00
Icahn Master	9/1/2010	451.00
Icahn Master	9/2/2010	110.00
Icahn Master	10/29/2010	5,324.00

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

Icahn Master	11/10/2010	52,607.00
Icahn Master	11/11/2010	14,834.00
Icahn Master	11/12/2010	203,106.00
Icahn Master	11/15/2010	103,729.00
Icahn Master	11/16/2010	103,729.00
Icahn Master	11/17/2010	51,862.00
Icahn Master	6/17/2011	78,734.00
Icahn Master	7/15/2011	11,567.00
Icahn Master	9/1/2011	2,121,935.00 (3)
Icahn Master II	8/12/2010	4,817.00
Icahn Master II	8/13/2010	90,691.00
Icahn Master II	8/16/2010	18,051.00
Icahn Master II	8/17/2010	38.00
Icahn Master II	8/18/2010	213.00
Icahn Master II	8/19/2010	1,180.00
Icahn Master II	8/20/2010	7,585.00
Icahn Master II	8/23/2010	20,155.00
Icahn Master II	8/24/2010	34,682.00
Icahn Master II	8/25/2010	25,202.00
Icahn Master II	8/26/2010	45,718.00
Icahn Master II	8/27/2010	27,731.00
Icahn Master II	8/30/2010	14,379.00
Icahn Master II	8/31/2010	18,693.00
Icahn Master II	9/1/2010	1,938.00
Icahn Master II	9/2/2010	32.00
Icahn Master II	11/10/2010	12,754.00
Icahn Master II	11/11/2010	4,293.00
Icahn Master II	11/12/2010	58,790.00
Icahn Master II	11/15/2010	30,025.00
Icahn Master II	11/16/2010	30,024.00
Icahn Master II	11/17/2010	15,015.00
Icahn Master II	6/17/2011	26,993.00
Icahn Master II	7/15/2011	3,979.00
Icahn Master II	9/1/2011	817,470.00 (3)
Icahn Master III	8/12/2010	2,335.00
Icahn Master III	8/13/2010	43,985.00
Icahn Master III	8/16/2010	8,754.00
Icahn Master III	8/17/2010	21.00
Icahn Master III	8/18/2010	102.00
Icahn Master III	8/19/2010	572.00
Icahn Master III	8/20/2010	3,680.00
Icahn Master III	8/23/2010	9,774.00
Icahn Master III	8/24/2010	16,821.00
Icahn Master III	8/25/2010	12,223.00
Icahn Master III	8/26/2010	22,174.00
Icahn Master III	8/27/2010	13,449.00
Icahn Master III	8/30/2010	6,974.00
Icahn Master III	8/31/2010	9,065.00
Icahn Master III	10/29/2010	636.00
Icahn Master III	11/10/2010	7,092.00
Icahn Master III	11/11/2010	2,090.00
Icahn Master III	11/12/2010	28,619.00
Icahn Master III	11/15/2010	14,616.00
Icahn Master III	11/16/2010	14,617.00
Icahn Master III	11/17/2010	7,308.00
Icahn Master III	6/17/2011	11,744.00
Icahn Master III	7/15/2011	1,728.00
Icahn Master III	9/1/2011	330,866.00 (3)

(3) The Direct Beneficial Owner acquired these Shares upon the exercise of

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

call options as described on Attachment I-A to this Annex A.

Shares purchased by each of the Direct Beneficial Owners are maintained in margin accounts that include positions in securities in addition to the Shares. As of October 17, 2011, the indebtedness of (i) High River's margin account was approximately \$649.7 million, (ii) Icahn Partners' margin account was approximately \$984.5 million, (iii) Icahn Master's margin account was approximately \$1,147.6 million, (iv) Icahn Master II's margin account was approximately \$336.4 million, and (v) Icahn Master III's margin account was approximately \$157.6 million.

### ANNEX A ATTACHMENT 1-A

The following are American call options to purchase one Share of underlying common stock, purchased by the Direct Beneficial Owners, which were written by UBS AG with a \$9.10 strike price and an expiration date of November 16, 2012, and which provided for physical settlement (unless the Direct Beneficial Owner opted for a cash settlement). These call options are further described in the chart set forth below.

On September 1, 2011, the Direct Beneficial Owners exercised all of their respective call options.

NAME	DATE	QUANTITY
----	----	-----
High River	11/17/2010	11,240.00
High River	11/18/2010	8,260.00
High River	11/19/2010	5,784.00
High River	6/16/2011	86,289.00
High River	6/20/2011	8,537.00
High River	7/8/2011	45,044.00
High River	7/15/2011	11,000.00
High River	7/18/2011	105,062.00
High River	7/19/2011	107,394.00
High River	7/20/2011	80,000.00
High River	7/21/2011	160,000.00
High River	7/22/2011	186,003.00
High River	7/25/2011	91,962.00
High River	7/26/2011	170,335.00
High River	7/27/2011	133,288.00
High River	7/28/2011	116,962.00
Icahn Partners	11/17/2010	17,165.00
Icahn Partners	11/18/2010	12,615.00
Icahn Partners	11/19/2010	8,833.00
Icahn Partners	6/16/2011	136,543.00
Icahn Partners	6/20/2011	13,076.00
Icahn Partners	7/8/2011	69,597.00
Icahn Partners	7/15/2011	16,855.00
Icahn Partners	7/18/2011	160,988.00
Icahn Partners	7/19/2011	164,560.00
Icahn Partners	7/20/2011	122,584.00
Icahn Partners	7/21/2011	245,168.00
Icahn Partners	7/22/2011	285,013.00
Icahn Partners	7/25/2011	140,913.00
Icahn Partners	7/26/2011	261,005.00
Icahn Partners	7/27/2011	204,238.00
Icahn Partners	7/28/2011	179,220.00

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

Icahn Master	11/17/2010	19,432.00
Icahn Master	11/18/2010	14,280.00
Icahn Master	11/19/2010	10,000.00
Icahn Master	6/16/2011	72,083.00
Icahn Master	6/20/2011	14,123.00
Icahn Master	7/8/2011	72,134.00
Icahn Master	7/15/2011	18,174.00
Icahn Master	7/18/2011	173,586.00
Icahn Master	7/19/2011	177,437.00
Icahn Master	7/20/2011	132,179.00
Icahn Master	7/21/2011	264,354.00
Icahn Master	7/22/2011	307,317.00
Icahn Master	7/25/2011	151,941.00
Icahn Master	7/26/2011	281,430.00
Icahn Master	7/27/2011	220,219.00
Icahn Master	7/28/2011	193,246.00
Icahn Master II	11/17/2010	5,625.00
Icahn Master II	11/18/2010	4,133.00
Icahn Master II	11/19/2010	2,893.00
Icahn Master II	6/16/2011	112,238.00
Icahn Master II	6/20/2011	4,842.00
Icahn Master II	7/8/2011	27,111.00
Icahn Master II	7/15/2011	6,254.00
Icahn Master II	7/18/2011	59,730.00
Icahn Master II	7/19/2011	61,056.00
Icahn Master II	7/20/2011	45,481.00
Icahn Master II	7/21/2011	90,964.00
Icahn Master II	7/22/2011	105,748.00
Icahn Master II	7/25/2011	52,282.00
Icahn Master II	7/26/2011	96,841.00
Icahn Master II	7/27/2011	75,776.00
Icahn Master II	7/28/2011	66,496.00
Icahn Master III	11/17/2010	2,738.00
Icahn Master III	11/18/2010	2,012.00
Icahn Master III	11/19/2010	1,410.00
Icahn Master III	6/16/2011	24,293.00
Icahn Master III	6/20/2011	2,108.00
Icahn Master III	7/8/2011	11,334.00
Icahn Master III	7/15/2011	2,717.00
Icahn Master III	7/18/2011	25,946.00
Icahn Master III	7/19/2011	26,523.00
Icahn Master III	7/20/2011	19,756.00
Icahn Master III	7/21/2011	39,514.00
Icahn Master III	7/22/2011	45,935.00
Icahn Master III	7/25/2011	22,712.00
Icahn Master III	7/26/2011	42,066.00
Icahn Master III	7/27/2011	32,917.00
Icahn Master III	7/28/2011	28,885.00

ANNEX A  
ATTACHMENT 1-B

The following are European put options to sell one Share of common stock, which were written by the Direct Beneficial Owners to UBS AG and had a \$9.10 strike price and an expiration date of November 16, 2012 or the date on which the corresponding American-style call option described in Annex A, Attachment 1-A is exercised. These options provided that they settled in cash and are further described in the chart set forth below.

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

On September 1, 2011, the Direct Beneficial Owners exercised all of the call options described in Annex A, Attachment 1-A, and upon exercise of the call options, all of the put options described below expired pursuant to their terms.

NAME	DATE	QUANTITY
----	----	-----
High River	11/17/2010	11,240.00
High River	11/18/2010	8,260.00
High River	11/19/2010	5,784.00
High River	6/16/2011	86,289.00
High River	6/20/2011	8,537.00
High River	7/8/2011	45,044.00
High River	7/15/2011	11,000.00
High River	7/18/2011	105,062.00
High River	7/19/2011	107,394.00
High River	7/20/2011	80,000.00
High River	7/21/2011	160,000.00
High River	7/22/2011	186,003.00
High River	7/25/2011	91,962.00
High River	7/26/2011	170,335.00
High River	7/27/2011	133,288.00
High River	7/28/2011	116,962.00
Icahn Partners	11/17/2010	17,165.00
Icahn Partners	11/18/2010	12,615.00
Icahn Partners	11/19/2010	8,833.00
Icahn Partners	6/16/2011	136,543.00
Icahn Partners	6/20/2011	13,076.00
Icahn Partners	7/8/2011	69,597.00
Icahn Partners	7/15/2011	16,855.00
Icahn Partners	7/18/2011	160,988.00
Icahn Partners	7/19/2011	164,560.00
Icahn Partners	7/20/2011	122,584.00
Icahn Partners	7/21/2011	245,168.00
Icahn Partners	7/22/2011	285,013.00
Icahn Partners	7/25/2011	140,913.00
Icahn Partners	7/26/2011	261,005.00
Icahn Partners	7/27/2011	204,238.00
Icahn Partners	7/28/2011	179,220.00
Icahn Master	11/17/2010	19,432.00
Icahn Master	11/18/2010	14,280.00
Icahn Master	11/19/2010	10,000.00
Icahn Master	6/16/2011	72,083.00
Icahn Master	6/20/2011	14,123.00
Icahn Master	7/8/2011	72,134.00
Icahn Master	7/15/2011	18,174.00
Icahn Master	7/18/2011	173,586.00
Icahn Master	7/19/2011	177,437.00
Icahn Master	7/20/2011	132,179.00
Icahn Master	7/21/2011	264,354.00
Icahn Master	7/22/2011	307,317.00
Icahn Master	7/25/2011	151,941.00
Icahn Master	7/26/2011	281,430.00
Icahn Master	7/27/2011	220,219.00
Icahn Master	7/28/2011	193,246.00
Icahn Master II	11/17/2010	5,625.00
Icahn Master II	11/18/2010	4,133.00
Icahn Master II	11/19/2010	2,893.00



Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

Icahn Master II	6/16/2011	112,238.00
Icahn Master II	6/20/2011	4,842.00
Icahn Master II	7/8/2011	27,111.00
Icahn Master II	7/15/2011	6,254.00
Icahn Master II	7/18/2011	59,730.00
Icahn Master II	7/19/2011	61,056.00
Icahn Master II	7/20/2011	45,481.00
Icahn Master II	7/21/2011	90,964.00
Icahn Master II	7/22/2011	105,748.00
Icahn Master II	7/25/2011	52,282.00
Icahn Master II	07/26/2011	96,841.00
Icahn Master II	07/27/2011	75,776.00
Icahn Master II	7/28/2011	66,496.00
Icahn Master III	11/17/2010	2,738.00
Icahn Master III	11/18/2010	2,012.00
Icahn Master III	11/19/2010	1,410.00
Icahn Master III	6/16/2011	24,293.00
Icahn Master III	6/20/2011	2,108.00
Icahn Master III	7/8/2011	11,334.00
Icahn Master III	7/15/2011	2,717.00
Icahn Master III	7/18/2011	25,946.00
Icahn Master III	7/19/2011	26,523.00
Icahn Master III	7/20/2011	19,756.00
Icahn Master III	7/21/2011	39,514.00
Icahn Master III	7/22/2011	45,935.00
Icahn Master III	7/25/2011	22,712.00
Icahn Master III	7/26/2011	42,066.00
Icahn Master III	7/27/2011	32,917.00
Icahn Master III	7/28/2011	28,885.00

ANNEX B  
ATTACHMENT 1

INFORMATION ABOUT NOMINEES  
-----

NAME: James Unger

AGE: 63

BUSINESS ADDRESS: 625 N. Main Center  
St. Charles, Missouri 63301

RESIDENCE ADDRESS: {Address redacted}

PRINCIPAL OCCUPATION OR EMPLOYMENT: See below

CITIZENSHIP: United States of America

Mr. Unger does not, and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Mr. Unger has an interest in the election of directors at the Annual Meeting pursuant to the Nominee Agreement attached hereto as Annex D.

Mr. Unger has served as Vice Chairman of American Railcar Industries Inc. since April 2009 and has served on the board of directors since 1995. From March 1995 to April 2009, Mr. Unger served as Chief Executive Officer and President of

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

American Railcar Industries Inc. Mr. Unger also served as a consultant to American Railcar Industries Inc. from April 2009 to March 2010. Prior to joining American Railcar Industries Inc., he served ACF Industries, Inc. as its president from 1988 to 1995, as its senior vice president and chief financial officer from 1984 to 1988 and on its board of directors from August 1993 to March 2005. Since 2004, Mr. Unger has served as a director of American Railcar Leasing LLC. Since June 2003, Mr. Unger has served as president of Ohio Castings Company, LLC, a joint venture in which American Railcar Industries Inc. has an interest. From July 2007 through August 2010, Mr. Unger served on the executive committee of Axis, LLC (and its subsidiaries), an axle manufacturing joint venture in which American Railcar Industries Inc. has an interest. From 2008 through August 2010, Mr. Unger served on the board of directors of Amtek Railcar Industries Private Limited, an Indian joint venture in which American Railcar Industries Inc. has an interest. Mr. Unger served on the board of directors of Guaranty Financial Group and Guaranty Bank from August 2008 to August 2009. Mr. Unger was on the board of directors of Aspen Resources Group, an oil and gas exploration company from May 2002 until April 2007. Mr. Unger participates in several industry organizations, including as an executive committee member for the Railway Supply Institute, Inc. (RSI). He also is a board member of the American Railway Car Institute, a member of the project review committee for the RSI-AAR Railroad Tank Car Safety Research Test Project, a steering committee member of RSI on tank railcars, and a member of the National Freight and Transportation Association. Mr. Unger served as a member of the board of directors of Ranken Technical College from 1990 to 2002. With respect to American Railcar Industries Inc. and its various joint ventures mentioned above, ACF Industries, Inc., American Railcar Leasing LLC, Guaranty Financial Group and Guaranty Bank, Mr. Carl C. Icahn, directly or indirectly, either (i) controls or at such time controlled such company, or (ii) at such time had or has an interest in such company through the ownership of securities. Mr. Unger received a B.S. in Accounting from the University of Missouri, Columbia and is a Certified Public Accountant.

ANNEX B  
ATTACHMENT 2

INFORMATION ABOUT NOMINEES

-----  
NAME: Steve Mongillo  
AGE: 50  
BUSINESS ADDRESS: [Address redacted]  
RESIDENCE ADDRESS: [Address redacted]  
PRINCIPAL OCCUPATION OR EMPLOYMENT: See below  
CITIZENSHIP: United States of America

Mr. Mongillo does not, and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Mr. Mongillo has an interest in the election of directors at the Annual Meeting pursuant to the Nominee Agreement attached hereto as Annex D.

Mr. Mongillo is a private investor. From 2009 to 2011, Mr. Mongillo served as a director of American Railcar Industries, Inc. From January 2008 to January

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

2011, Mr. Mongillo served as a managing director of Icahn Capital LP, the entity through which Mr. Carl Icahn managed third party investment funds. From March 2009 to January 2011, Mr. Mongillo served as a director of WestPoint International Inc. Prior to joining Icahn Capital, Mr. Mongillo worked at Bear Stearns for 10 years, most recently as a senior managing director overseeing the leveraged finance group's efforts in the healthcare, real estate, gaming, lodging, leisure, restaurant and education sectors. With respect to each company mentioned above, except Bear Stearns, Mr. Carl Icahn, directly or indirectly, either (i) controls or at such time controlled such company or (ii) has or at such time had an interest in such company through the ownership of securities. Mr. Mongillo received a B.A. from Trinity College and an M.B.A from the Amos Tuck School of Business Administration at Dartmouth College.

ANNEX B  
ATTACHMENT 3

### INFORMATION ABOUT NOMINEES

-----

NAME: George Hebard

AGE: 38

BUSINESS ADDRESS: 767 Fifth Avenue, 47th Floor  
New York, NY 10153

RESIDENCE ADDRESS: [Address redacted]

PRINCIPAL OCCUPATION OR EMPLOYMENT: See below

CITIZENSHIP: United States of America

Mr. Hebard does not, and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Mr. Hebard has an interest in the election of directors at the Annual Meeting pursuant to the Nominee Agreement attached hereto as Annex D.

Since September 2011, George Hebard has been a Managing Director at Icahn Capital LP, the entity through which Carl C. Icahn manages investment funds. He provides investment management expertise on equity and debt investments across a range of industries. Prior to joining Mr. Icahn, from 2005 to 2011, Mr. Hebard served as a Managing Director at Blue Harbour Group, an investment firm in Greenwich, Connecticut. Prior to Blue Harbour Group, Mr. Hebard served as Managing Director at Ranger Partners from 2002 to 2003, and prior to Ranger Partners, Mr. Hebard was an Associate at Icahn Associates Corp., from 1998 to 2002. Mr. Hebard has an MBA from INSEAD and an A.B. in Economics from Princeton University.

ANNEX C

The written consent of each Nominee to being named as a nominee for election as a director of the Corporation and to serve as a director if elected, is attached to this Annex C. If the Corporation requests original signed statements of consents, the Record Holder will provide them.

CONSENT OF NOMINEE

The undersigned hereby consents to being named as a nominee for election as a director of Commercial Metals Company (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to Stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II L.P. ("Icahn Master II"), and Icahn Partners Master Fund III L.P. ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from Stockholders of the Company to be voted at the 2012 annual meeting of Stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected.

Dated: October 17, 2011

/s/ James Unger

-----

Name: James Unger

CONSENT OF NOMINEE

The undersigned hereby consents to being named as a nominee for election as a director of Commercial Metals Company (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to Stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II L.P. ("Icahn Master II"), and Icahn Partners Master Fund III L.P. ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from Stockholders of the Company to be voted at the 2012 annual meeting of Stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected.

Dated: October 17, 2011

/s/ Steve Mongillo

-----

Name: Steve Mongillo

CONSENT OF NOMINEE

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

The undersigned hereby consents to being named as a nominee for election as a director of Commercial Metals Company (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to Stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II L.P. ("Icahn Master II"), and Icahn Partners Master Fund III L.P. ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from Stockholders of the Company to be voted at the 2012 annual meeting of Stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected.

Dated: October 17, 2011

/s/ George Hebard

-----  
Name: George Hebard

ANNEX D

Attached to this Annex D is the form of agreement to be entered into between each of the Nominees and an affiliate of the Record Holder pursuant to which such affiliate has agreed to pay certain fees to the Nominees (except in the case of Mr. Hebard who is not receiving a fee) and to indemnify the Nominees with respect to certain costs incurred by the Nominees in connection with the proxy contest relating to the Annual Meeting.

ICAHN CAPITAL LP

October 17, 2011

To the undersigned potential nominee:

This will confirm our understanding as follows:

You agree that you are willing, should we so elect, to become a member of a slate of nominees (the "Slate") to stand for election as directors of Commercial Metals Company (the "Company") in connection with a proxy contest with management of the Company in respect of the election of directors of the Company at the 2012 Annual Meeting of Stockholders of Commercial Metals Company (the "Annual Meeting"), expected to be held in early 2012, or a special meeting of stockholders of the Company called for a similar purpose (the "Proxy Contest").

Icahn Capital LP ("Icahn") agrees to pay the costs of the Proxy Contest.

In addition, upon our filing of a preliminary proxy statement with the SEC, which indicates that Icahn, or an affiliate thereof, intends to nominate you for election at the Annual Meeting, you will be entitled to be paid \$25,000 by Icahn unless you are elected to serve as a director of the Company at the Annual Meeting or a special meeting of stockholders of the Company called for a similar purpose or in connection with a settlement of the Proxy Contest by Icahn and the Company, in which case you will not receive any payment from Icahn in connection with the Proxy Contest. Payment to you pursuant to this paragraph, if any, will

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

be made by Icahn, subject to the terms hereof, upon the earliest of (i) the certification of the results of the election in respect of the Proxy Contest, (ii) the settlement of the Proxy Contest by Icahn and the Company, or (iii) the withdrawal of the Proxy Contest by Icahn.(4)

You understand that it may be difficult, if not impossible, to replace nominees who, such as yourself, have agreed to serve on the Slate and later change their minds and determine not to seek election. Accordingly, the Slate is relying upon your agreement to seek election. In that connection, you are being supplied with a questionnaire in which you will provide Icahn with information necessary for Icahn to make appropriate disclosure both to the Company and for use in creating the proxy material to be sent to shareholders of the Company and to be filed with the Securities and Exchange Commission. You have agreed that (i) you will immediately complete and sign the questionnaire and return it to Andrew Langham, Assistant General Counsel, Icahn Enterprises LP, 767 Fifth Avenue, Suite 4700, New York, NY 10153, Tel: (212) 702-4382, Fax: (212) 688-1158, Email: [alangham@sfire.com](mailto:alangham@sfire.com) and (ii) your responses to the questions contained therein will be true and correct in all respects. In addition, you have agreed that, concurrently with your execution of this letter, you will execute the attached instrument directed to the Company informing the Company that you consent to being nominated by Icahn, or an affiliate thereof, for election as a director of the Company and, if elected, consent to serving as a director of the Company. Upon being notified that we have chosen you, we may forward that instrument and your completed questionnaire (or summaries thereof) to the Company.

Icahn hereby agrees that, so long as you actually serve on the Slate, Icahn will defend, indemnify and hold you harmless from and against any and all losses, damages, penalties, judgments, awards, liabilities, costs, expenses and disbursements (including, without limitation, reasonable attorneys' fees, costs, expenses and disbursements) incurred by you in the event that (i) you become a party, or are threatened to be made a party, to any civil, criminal, administrative or arbitrative action, suit or proceeding, and any appeal thereof relating solely to your role as a nominee for director of Commercial Metals Company on the Slate (a "Proceeding") or (ii) you are called to testify or give a deposition in any Proceeding (whether or not you are a party or are threatened to be made a party to such Proceeding), including, in each case, the advancement to you of all reasonable attorneys' costs and expenses incurred by you in connection with any Proceeding. Your right of indemnification hereunder shall continue (i) in the event that Icahn determines to withdraw the Slate or remove you from the Slate and (ii) after the election has taken place but only for events which occur prior to such election and subsequent to the date hereof. Anything to the contrary herein notwithstanding, Icahn is not indemnifying you for any action taken by you or on your behalf which occurs prior to the date hereof or subsequent to the Annual Meeting or such earlier time as you are no longer a nominee of the Slate for election to the Company's Board of Directors or for any actions taken by you as a director of the Company, if you are elected. Nothing herein shall be construed to provide you an indemnity: (i) in the event you are found to have engaged in a violation of any provision of state or federal law in connection with the Proxy Contest unless you demonstrate that your action was taken in good faith and in a manner you reasonably believed to be in or not opposed to the best interests of electing the Slate; or (ii) if you acted in a manner which constitutes gross negligence or willful misconduct. In the event that you shall make any claim for indemnification hereunder, you shall promptly notify Icahn in the event of any third-party claims actually made against you or known by you to be threatened. In addition, with respect to any such claim, Icahn shall be entitled to control your defense with counsel chosen

---

(4) This paragraph does not appear in the Nominee Agreement signed by Mr. Hebard.

Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

by Icahn. Icahn shall not be responsible for any settlement of any claim against you covered by this indemnity without its prior written consent. However, Icahn may not enter into any settlement of any such claim without your consent unless such settlement includes a release of you from any and all liability in respect of such claim.

Each of us recognizes that should you be elected to the Board of Directors of the Company all of your activities and decisions as a director will be governed by applicable law and subject to your fiduciary duty to the stockholders of the Company and, as a result, that there is, and can be, no agreement between you and Icahn which governs the decisions which you will make as a director of the Company.

Should the foregoing agree with your understanding, please so indicate in the space provided below, whereupon this letter will become a binding agreement between us.

Very truly yours,

ICAHN CAPITAL LP

By: \_\_\_\_\_  
Name: Edward E. Mattner  
Title: Authorized Signatory

Agreed to and Accepted as of  
the date first above written:

\_\_\_\_\_  
Name:

EXHIBIT 2

The Participants  
-----

The participants in the potential solicitation of proxies (the "Participants") from stockholders of Commercial Metals Company ("Commercial Metals" or the "Corporation") may include the following: Icahn Partners LP, a Delaware limited partnership ("Icahn Partners"), Icahn Partners Master Fund LP, a Cayman Islands limited partnership ("Icahn Master"), Icahn Partners Master Fund II LP, a Cayman Islands limited partnership ("Icahn Master II"), Icahn Partners Master Fund III LP, a Cayman Islands limited partnership ("Icahn Master III"), High River Limited Partnership, a Delaware limited partnership ("High River"), Barberry Corp., a Delaware corporation ("Barberry"), Hopper Investments LLC, a Delaware limited liability company ("Hopper"), Beckton Corp., a Delaware corporation ("Beckton"), Icahn Enterprises G.P. Inc., a Delaware corporation ("Icahn Enterprises GP"), Icahn Enterprises Holdings L.P., a Delaware limited partnership ("Icahn Holdings"), IPH GP LLC, a Delaware limited liability company ("IPH"), Icahn Capital L.P., a Delaware limited partnership ("Icahn Capital"), Icahn Onshore LP, a Delaware limited partnership ("Icahn Onshore"), Icahn

## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

Offshore LP, a Delaware limited partnership ("Icahn Offshore"), Mr. Carl C. Icahn, James Unger, Steve Mongillo and George Hebard.

The principal business address of each of (i) Icahn Offshore, Icahn Onshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP and Beckton is White Plains Plaza, 445 Hamilton Avenue - Suite 1210, White Plains, NY 10601 and (ii) Barberry and Hopper is c/o Icahn Capital LP, 767 Fifth Avenue, 47th Floor, New York, NY 10153. The business address of Mr. Icahn and Mr. Hebard is c/o Icahn Associates Corp., 767 Fifth Avenue, 47th Floor, New York, NY 10153. The business address of Mr. Unger is 625 N. Main Center, St. Charles, Missouri 63301. The business address of Mr. Mongillo is 105 Grandview Avenue, Rye, New York 10580.

Icahn Partners, Icahn Master, Icahn Master II, Icahn Master III and High River (collectively, the "Icahn Parties") are entities controlled by Carl C. Icahn. Mr. Hebard is an employee and/or officer and director of the Icahn Parties and various other entities controlled by Mr. Icahn who may also participate in soliciting proxies from Commercial Metal's stockholders. Mr. Unger is a director of an entity affiliated with Mr. Icahn. Mr. Hebard does not own beneficially any interest in securities of Commercial Metals, and will not receive any special compensation in connection with such solicitation. Neither Mr. Unger nor Mr. Mongillo own beneficially any interest in the securities of Commercial Metals. Each of Mr. Unger and Mr. Mongillo have an interest in the election of directors at the Commercial Metals 2012 Annual Meeting of Stockholders pursuant to a Nominee Agreement between each of Mr. Unger and Mr. Mongillo and an affiliate of the Icahn Parties, pursuant to which an affiliate of the Icahn Parties has agreed to pay each of Mr. Unger and Mr. Mongillo a fee of \$25,000 under certain circumstances. In addition, an affiliate of the Icahn Parties has agreed to indemnify each of Mr. Unger, Mr. Mongillo and Mr. Hebard with respect to certain costs incurred by each of Mr. Unger, Mr. Mongillo and Mr. Hebard in connection with the solicitation of proxies.

Barberry is primarily engaged in the business of serving as the sole member of Hopper and investing in securities. Hopper is primarily engaged in the business of serving as the general partner of High River and investing in securities. Icahn Offshore is primarily engaged in the business of serving as the general partner of each of Icahn Master, Icahn Master II and Icahn Master III. Icahn Onshore is primarily engaged in the business of serving as the general partner of Icahn Partners. Icahn Capital is primarily engaged in the business of serving as the general partner of each of Icahn Offshore and Icahn Onshore. IPH is primarily engaged in the business of serving as the general partner of Icahn Capital. Icahn Holdings is primarily engaged in the business of holding direct or indirect interests in various operating businesses. Icahn Enterprises GP is primarily engaged in the business of serving as the general partner of each of Icahn Enterprises L.P. and Icahn Holdings. Beckton is primarily engaged in the business of holding the capital stock of Icahn Enterprises GP. Mr. Carl C. Icahn is primarily engaged in serving as (i) Chief Executive Officer of Icahn Capital LP, a wholly owned subsidiary of Icahn Enterprises L.P., through which Mr. Icahn manages various private investment funds, including Icahn Partners, Icahn Master, Icahn Master II and Icahn Master III, (ii) Chairman of the Board of Icahn Enterprises GP, the general partner of Icahn Enterprises L.P., a New York Stock Exchange listed diversified holding company engaged in a variety of businesses, including investment management, automotive, casino gaming, railcar, food packaging, metals, real estate and home fashion, and (iii) Chairman of the Board and a director of Starfire Holding Corporation ("Starfire"), a holding company engaged in the business of investing in and/or holding securities of various entities, and as Chairman of the Board and a director of various of Starfire's subsidiaries.

The Icahn Parties may be deemed to beneficially own, in the aggregate, 11,525,000 Shares, representing approximately 9.98% of the Corporation's outstanding shares of common stock (the "Shares") (based upon the 115,533,540



## Edgar Filing: COMMERCIAL METALS CO - Form DFAN14A

Shares stated to be outstanding as of July 1, 2011 by the Corporation in the Corporation's Form 10-Q filed for the quarterly period ended May 31, 2011).

High River has sole voting power and sole dispositive power with regard to 2,304,999 Shares. Each of Hopper, Barberry and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Partners has sole voting power and sole dispositive power with regard to 3,531,955 Shares. Each of Icahn Onshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Master has sole voting power and sole dispositive power with regard to 3,808,353 Shares. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Master II has sole voting power and sole dispositive power with regard to 1,310,448 Shares. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares. Icahn Master III has sole voting power and sole dispositive power with regard to 569,245 Shares. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn has shared voting power and shared dispositive power with regard to such Shares.

Each of Hopper, Barberry and Mr. Icahn, by virtue of their relationships to High River, may be deemed to indirectly beneficially own the 2,304,999 Shares which High River directly beneficially owns. Each of Icahn Onshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn, by virtue of their relationships to Icahn Partners, may be deemed to indirectly beneficially own the 3,531,955 Shares which Icahn Partners directly beneficially owns. Each of Icahn Offshore, Icahn Capital, IPH, Icahn Holdings, Icahn Enterprises GP, Beckton and Mr. Icahn, by virtue of their relationships to Icahn Master, Icahn Master II and Icahn Master III, may be deemed to indirectly beneficially own the 5,688,046 Shares which Icahn Master, Icahn Master II and Icahn Master III directly beneficially own.