ICAHN ENTERPRISES L.P.
Form 10-K/A
August 04, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2008

Commission File Number 1-9516

ICAHN ENTERPRISES L.P.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	13-3398766
(State or Other Jurisdiction	(IRS Employer

of Incorporation or Organization) Identification No.)

767 Fifth Avenue, Suite 4700
New York, NY 10153

(Address of Principal Executive Offices) (Zip Code)

(212) 702-4300

(Registrant s Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Depositary Units Representing Limited Partner Interests	New York Stock Exchange
5% Cumulative Pay-in-Kind Redeemable Preferred Units Representing Limited Partner Interests	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined by Rule 405 of the Securities Act. Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act. Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act (Check One):

Large Accelerated Filer o Accelerated Filer x Non-accelerated Filer o Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No x

The aggregate market value of depositary units held by non-affiliates of the registrant as of June 30, 2008, the last business day of the registrant s most recently completed second fiscal quarter, based upon the closing price of depositary units on the New York Stock Exchange Composite Tape on such date was $431,255,032.

The number of depositary and preferred units outstanding as of the close of business on July 31, 2009 was 74,775,597 and 13,127,179, respectively.

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EXPLANATORY NOTE

We are updating Part II, Items 6 (Selected Financial Data), 7 (Management s Discussion and Analysis of Financial Condition and Results of Operations) and 8 (Financial Statements and Supplementary Data) of our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, or our 2008 Annual Report on Form 10-K, filed with the SEC on March 4, 2009, to reflect the retrospective application of the presentation and disclosure requirements of SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51*.

In addition, in response to a Securities and Exchange Commission comment letter dated April 28, 2009, regarding certain financial matters set forth in our 2008 Annual Report on Form 10-K, we are amending Part II, Item 8 (Financial Statements and Supplementary Data), to reformat our consolidated balance sheets, and statements of operations and cash flows for all periods presented. This amendment has no effect on our consolidated financial position, results of operations or cash flows.

Except as described above, no other changes have been made to our 2008 Annual Report on Form 10-K.

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PART II

Item 6. Selected Financial Data

The following table contains our selected historical consolidated financial data, which should be read in conjunction with our consolidated financial statements and the related notes thereto, and Management s Discussion and Analysis of Financial Condition and Results of Operations contained in this annual report on Form 10-K/A. The selected historical consolidated financial data as of December 31, 2008 and 2007 and for the years ended December 31, 2008, 2007 and 2006 have been derived from our audited consolidated financial statements at those dates and for those periods, contained elsewhere in this annual report on Form 10-K/A. The selected historical consolidated financial data as of December 31, 2006, 2005 and 2004 and for the years ended December 31, 2005 and 2004 have been derived from our audited consolidated financial statements at those dates and for those periods, not contained in this annual report on Form 10-K/A, as adjusted retrospectively for certain reclassifications of our real estate segment as held and used, and the application of the presentation and disclosure requirements of SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51*.

	Year Ended December 31,				
	2008	2007	2006	2005	2004
	(In Millions, Except Per Unit Amounts)				
Statement of Operations Data:					
Total revenues	$5,027	$2,491	$3,006	$1,528	$855
(Loss) income from continuing operations	$(3,173)	$480	$1,008	$286	$204
Income from discontinued operations	485	84	850	23	107
Net (loss) income	(2,688)	564	1,858	309	311
Less: Net loss (income) attributable to non-controlling interests	2,645	(256)	(750)	(227)	(47)
Net (loss) income attributable to Icahn Enterprises	$(43)	$308	$1,108	$82	$264
Net (loss) income attributable to Icahn Enterprises allocable to:					
Limited partners	$(57)	$103	$507	$(21)	$131
General partner	14	205	601	103	133
Net (loss) income attributable to Icahn Enterprises	$(43)	$308	$1,108	$82	$264
Net (loss) income attributable to Icahn Enterprises from:					
Continuing operations	$(528)	$219	$311	$54	$156
Discontinued operations	485	89	797	28	108
Net (loss) income attributable to Icahn Enterprises	$(43)	$308	$1,108	$82	$264
Basic and diluted (loss) income per LP Unit:					
(Loss) income from continuing operations	$(7.84)	$0.24	$0.03	$(0.87)	$0.53
Income from discontinued operations	7.04	1.34	8.19	0.50	2.31
Basic and diluted (loss) income per LP unit	$(0.80)	$1.58	$8.22	$(0.37)	$2.84
Weighted average limited partnership units outstanding	71	65	62	54	46
Other Financial Data:					
EBITDA[(1)]	$786	$545	$1,464	$376	$439

Adjusted EBITDA[1]	837	483	1,452	437	448
Cash distributions declared, per LP Unit	1.00	0.55	0.40	0.20	

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	December 31, 2008	2007	2006	2005	2004
	(In Millions)				
Balance Sheet Data:					
Cash and cash equivalents	$ 2,612	$ 2,113	$ 1,884	$ 367	$ 787
Investments	4,515	6,432	3,458	3,399	721
Property, plant and equipment, net	2,878	533	555	517	620
Total assets	18,815	12,434	9,280	7,257	3,056
Debt	4,571	2,041	953	918	752
Preferred limited partner units	130	124	118	112	107
Equity attributable to Icahn Enterprises	2,398	2,313	2,832	1,738	1,787

(1) EBITDA represents earnings before interest expense, income tax (benefit) expense and depreciation, depletion and amortization. We define Adjusted EBITDA as EBITDA excluding the effect of unrealized losses or gains on derivative contracts. We present EBITDA and Adjusted EBITDA because we consider them important supplemental measures of our performance and believe they are frequently used by securities analysts, investors and other interested parties in the evaluation of companies that have issued debt, many of which present EBITDA and Adjusted EBITDA when reporting their results. We present EBITDA and Adjusted EBITDA on a consolidated basis, net of the effect of non-controlling interests, however we conduct substantially all of our operations through subsidiaries. The operating results of our subsidiaries may not be sufficient to make distributions to us. In addition, our subsidiaries are not obligated to make funds available to us for payment of our indebtedness, payment of distributions on our depositary units or otherwise, and distributions and intercompany transfers from our subsidiaries to us may be restricted by applicable law or covenants contained in debt agreements and other agreements to which these subsidiaries currently may be subject or into which they may enter into in the future. The terms of any borrowings of our subsidiaries or other entities in which we own equity may restrict dividends, distributions or loans to us.

EBITDA and Adjusted EBITDA have limitations as analytical tools, and you should not consider them in isolation, or as substitutes for analysis of our results as reported under generally accepted accounting principles in the United States, or U.S. GAAP. For example, EBITDA and Adjusted EBITDA:

do not reflect our cash expenditures, or future requirements for capital expenditures, or contractual commitments;

do not reflect changes in, or cash requirements for, our working capital needs; and

do not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments on our debt.

Although depreciation, depletion and amortization are non-cash charges, the assets being depreciated, depleted or amortized often will have to be replaced in the future, and EBITDA and Adjusted EBITDA do not reflect any cash requirements for such replacements. Other companies in the industries in which we operate may calculate EBITDA and Adjusted EBITDA differently than we do, limiting their usefulness as comparative measures. In addition, EBITDA and Adjusted EBITDA do not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations.

EBITDA and Adjusted EBITDA are not measurements of our financial performance under U.S. GAAP and should not be considered as an alternative to net income or any other performance measures derived in accordance with U.S. GAAP or as an alternative to cash flow from operating activities as a measure of our liquidity. Given these limitations, we rely primarily on our U.S. GAAP results and use EBITDA only supplementally in measuring our financial performance.

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The following table reconciles net income to EBITDA and EBITDA to Adjusted EBITDA for the periods indicated (in millions of dollars):

	Year Ended December 31,				
	2008	2007	2006	2005	2004
Net (loss) income	$ (43)	$ 308	$ 1,108	$ 82	$ 264
Interest expense	273	171	143	105	68
Income tax expense (benefit)	308	27	39	31	(1)
Depreciation, depletion and amortization	248	39	174	158	108
EBITDA	786	545	1,464	376	439
Unrealized (gains) losses on derivative contracts	51	(62)	(12)	61	9
Adjusted EBITDA	$ 837	$ 483	$ 1,452	$ 437	$ 448

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Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations

Management s discussion and analysis of financial condition and results of operations is comprised of the following sections:

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The following discussion is intended to assist you in understanding our present business and results of operations together with our present financial condition. This section should be read in conjunction with our Consolidated Financial Statements and the accompanying notes.

Overview

Introduction

Icahn Enterprises L.P., or Icahn Enterprises, is a master limited partnership formed in Delaware on February 17, 1987. We own a 99% limited partner interest in Icahn Enterprises Holdings L.P., or Icahn Enterprises Holdings. Icahn Enterprises Holdings and its subsidiaries own substantially all of our assets and liabilities and conduct substantially all of our operations. Icahn Enterprises G.P. Inc., or Icahn Enterprises GP, our sole general partner, which is owned and controlled by Mr. Carl C. Icahn, owns a 1% general partner interest in both us and Icahn Enterprises Holdings, representing an aggregate 1.99% general partner interest in us and Icahn Enterprises Holdings. As of December 31, 2008, affiliates of Mr. Icahn owned 68,644,590 of our depositary units and 10,819,213 of our preferred units, which represented approximately 91.8% and 86.5% of our outstanding depositary units and preferred units, respectively.

We are a diversified holding company owning subsidiaries engaged in the following operating businesses: Investment Management (effective August 8, 2007), Automotive (effective July 3, 2008), Metals (effective November 5, 2007), Real Estate and Home Fashion. As of December 31, 2007, we also operated discontinued operations, including our former Gaming segment. In addition to our operating businesses, we discuss the Holding Company, which includes the unconsolidated results of Icahn Enterprises and Icahn Enterprises Holdings, and investment activity and expenses associated with the activities of the Holding Company.

In accordance with United States generally accepted accounting principles, or U.S. GAAP, assets transferred between entities under common control are accounted for at historical cost similar to a pooling of interests, and the financial statements of previously separate companies for all periods under common control prior to the acquisition are restated on a consolidated basis.

Variations in the amount and timing of gains and losses on our investments can be significant. The results of our Real Estate and Home Fashion segments are seasonal while our Automotive segment is moderately seasonal.

Acquisition of Controlling Interest in Federal-Mogul Corporation

As described below, on July 3, 2008, Icahn Enterprises consummated the acquisition of a majority interest in Federal-Mogul Corporation, or Federal-Mogul. Federal-Mogul is a leading global supplier of parts, components, modules and systems to customers in the automotive, small engine, heavy-duty, marine, railroad, aerospace and industrial markets. Federal-Mogul has established a global presence and conducts its operations through various manufacturing, distribution and technical centers that are wholly owned subsidiaries or partially owned joint ventures, organized into five product groups: Powertrain Energy, Powertrain Sealing and Bearings, Vehicle Safety and Protection, Automotive Products and Global Aftermarket. Federal-Mogul offers its customers a diverse array of market-leading products for original equipment manufacturers, or OEM, and replacement parts (referred to as aftermarket) applications, including engine bearings, pistons, piston rings, piston pins, ignition products, fuel products, cylinder liners, valve seats and guides, sealing products, element resistant systems protection sleeving products, electrical connectors and sockets, disc pads and brake shoes, lighting, wiper and steering products. Federal-Mogul s principal customers include most of the world s OEMs of vehicles and industrial products and aftermarket retailers and wholesalers.

The predecessor to Federal-Mogul, or the Predecessor Company, and all of its then-existing wholly owned U.S. subsidiaries filed voluntary petitions on October 1, 2001 for reorganization under Chapter 11 of Title 11 of the United States Code, or the Bankruptcy Code, with the United States Bankruptcy Court for the District of Delaware, or the Bankruptcy Court. On October 1, 2001 (referred to as the Petition Date), certain of the Predecessor Company s United Kingdom subsidiaries (together with the U.S. Subsidiaries, referred to as the Debtors) also filed voluntary petitions for reorganization under the Bankruptcy Code with the Bankruptcy Court. On November 8, 2007, the Bankruptcy Court entered an Order, or the Confirmation Order, confirming the Fourth Amended Joint Plan of Reorganization for Debtors and Debtors-in-Possession (as Modified) (referred to as the Plan) and entered Findings of Fact and Conclusions of Law regarding the Plan (referred to as the Findings of Fact and Conclusions of Law). On November 14, 2007, the United States District Court for the District of Delaware, entered an order affirming the Confirmation Order and adopting the Findings of Fact and Conclusions of Law. On December 27, 2007 (referred to as the Effective Date), the Plan became effective in accordance with its terms. On the Effective Date, the Predecessor Company merged with and into New Federal-Mogul Corporation whereupon (i) the separate corporate existence of the Predecessor Company ceased, (ii) New Federal-Mogul Corporation became the surviving corporation and continued to be governed by the laws of the State of Delaware and (iii) New Federal-Mogul Corporation was renamed Federal-Mogul Corporation (also referred herein as Federal-Mogul or the Successor Company).

On July 3, 2008, pursuant to a stock purchase agreement with Thornwood Associates Limited Partnership, or Thornwood, and Thornwood s general partner, Barberry Corp, or Barberry, we acquired a majority interest in Federal-Mogul for an aggregate price of $862,750,000 (or $17.00 per share, which represented a discount to Thornwood s purchase price of such shares). Thornwood and Barberry are wholly owned by Mr. Carl C. Icahn. Prior to our majority interest acquisition of Federal-Mogul, Thornwood owned an aggregate of 75,241,924 shares of stock of Federal-Mogul, or Federal-Mogul Shares. Thornwood had acquired such shares as follows: (i) 50,100,000 Federal-Mogul Shares pursuant to the exercise of two options on February 25, 2008 acquired in December 2007 from the Federal-Mogul Asbestos Personal Injury Trust; and (ii) 25,141,924 Federal-Mogul Shares pursuant to and in connection with Federal-Mogul s Plan of Reorganization under Chapter 11 of the United States Code, which became effective on December 27, 2007.

On December 2, 2008, we acquired an additional 24,491,924 of Federal-Mogul Shares from Thornwood, which represented the remaining Federal-Mogul Shares owned by Thornwood. As a result of this transaction, we beneficially own 75,241,924 Federal-Mogul Shares, or 75.7% of the total issued and outstanding capital stock of Federal-Mogul. In consideration of the acquisition of the additional Federal-Mogul Shares, we issued to Thornwood 4,286,087 (or $153 million based on the opening price of $35.60 on our depositary units on December 2, 2008) fully paid and non-assessable depositary units representing our limited partner interests.

Each of the acquisitions was approved by the audit committee of the independent directors of Icahn Enterprises GP. The audit committee was advised by its own legal counsel and independent financial advisor with respect to the transaction. The audit committee received an opinion from its financial adviser as to the fairness to us, from a financial point of view, of the consideration paid.

Divestiture

On February 20, 2008, we consummated the sale of our subsidiary, American Casino & Entertainment Properties LLC, or ACEP, to an affiliate of Whitehall Street Real Estate Fund for $1.2 billion, realizing a gain of $472 million, after taxes. The sale of ACEP included the Stratosphere and three other Nevada gaming properties, which represented all of our remaining gaming operations.

In connection with the closing, we repaid all of ACEP s outstanding 7.85% Senior Secured Notes due 2012, which were tendered pursuant to ACEP s previously announced tender offer and consent solicitation. In addition, ACEP repaid in full all amounts outstanding, and terminated all commitments, under its credit facility with Bear Stearns Corporate Lending Inc., as administrative agent, and the other lenders thereunder.

We elected to deposit $1.2 billion of the gross proceeds from the sale into escrow accounts to fund investment activities through tax-deferred exchanges under Section 1031 of the Internal Revenue Code, or the Code. During the third quarter of fiscal 2008, we invested $465 million of the gross proceeds to purchase two net leased properties within our Real Estate segment, resulting in a deferral of $103 million in taxes. The balance of the escrow accounts was subsequently released.

Declaration of Distribution on Depositary Units

On February 23, 2009, the board of directors approved a payment of a quarterly cash distribution of $0.25 per unit on our depositary units payable in the first quarter of fiscal 2009. The distribution will be paid on March 30, 2009, to depositary unitholders of record at the close of business on March 16, 2009. Under the terms of the indenture dated April 5, 2007 governing our variable rate notes due 2013, we will also be making a $0.15 distribution to holders of these notes in accordance with the formula set forth in the indenture.

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Results of Operations

Overview

A summary of the significant developments for fiscal 2008 is as follows:

Consummation of the sale of ACEP on February 20, 2008 for $1.2 billion, realizing a gain of $472 million, after taxes of $260 million;
Investment of $465 million of the gross proceeds in a Code Section 1031 Exchange transaction related to the sale of ACEP with the purchase of two net leased properties within our Real Estate segment, resulting in a deferral of $103 million in taxes;
The inclusion of $5.7 billion of revenues from our Automotive segment for the period March 1, 2008 through December 31, 2008. Additionally, our Automotive segment results for the period March 1, 2008 through December 31, 2008 included total asset impairment charges aggregating $434 million, of which $222 million related to goodwill and $130 related to other indefinite-lived intangible assets. These charges were principally attributable to significant decreases in forecasted future cash flows as Federal-Mogul adjusts to the known and anticipated changes in industry volumes;
Increased net sales from the Metals segment of $405 million for fiscal 2008 as compared to fiscal 2007, resulting from an increase in the average selling price of ferrous scrap, increased volume of shipped ferrous production and the inclusion of financial results of acquisitions made during fiscal 2007 and early fiscal 2008;
Loss attributable to Icahn Enterprises from continuing operations from the Investment Management segment of $335 million during fiscal 2008 resulting from investment losses from the Private Funds which were primarily affected by the decline in the value of the Private Funds largest equity positions; and
Reduced net sales from the Home Fashion segment of $258 million for fiscal 2008 as compared to fiscal 2007 due to the weak home textile retail environment and the elimination of unprofitable programs.

A summary of the significant developments for fiscal 2007 is as follows:

The acquisition of the Investment Management business on August 8, 2007 for an initial consideration of 8,632,679 of our depositary units, valued at $810 million;
The acquisition of PSC Metals from Philip Services Corporation, or Philip, on November 5, 2007 for a total consideration of $335 million in cash;
An increase in the Investment Management segment s AUM of $3.5 billion compared to December 31, 2006;
The issuance of $500 million of additional 7.125% senior unsecured notes in January 2007;
The issuance of $600 million of variable rate notes in April 2007;
The sale of our position in common stock of SandRidge Energy, Inc., or SandRidge, for total cash consideration of $243 million in April 2007;
Income attributable to Icahn Enterprises from continuing operations from our Investment Management segment of $170 million due to overall positive returns of the Private Funds despite broad, volatile market conditions in fiscal 2007; and
The continued restructuring efforts of WPI, including the closure of all of WPI s retail stores and related inventory disposal. WPI recorded a charge of $14 million related to this restructuring effort, which is included in discontinued operations.

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Consolidated Financial Results of Continuing Operations

The following table summarizes revenues and income attributable to Icahn Enterprises from continuing operations for each of our segments (in millions of dollars):

	Revenues[1]		
	Year Ended December 31,		
	2008	2007	2006
Investment Management	$ (2,783)	$ 588	$ 1,104
Automotive[2]	5,727		
Metals	1,243	834	715
Real Estate	103	113	137
Home Fashion	438	706	898
Holding Company	299	250	152
Total	$ 5,027	$ 2,491	$ 3,006

	Income (Loss) Attributable to Icahn Enterprises From Continuing Operations		
	Year Ended December 31,		
	2008	2007	2006
Investment Management	$ (335)	$ 170	$ 260
Automotive[2]	(350)		
Metals	66	42	51
Real Estate	14	14	25
Home Fashion	(55)	(84)	(71)
Holding Company	132	77	46
Total	$ (528)	$ 219	$ 311

(1) Revenues include interest and dividend income, other income, net and gain on extinguishment of debt.

(2) Automotive segment results are for the period March 1, 2008 through December 31, 2008.

Investment Management

Overview

On August 8, 2007, we acquired the general partnership interests in Icahn Onshore LP, or the Onshore GP, and Icahn Offshore LP, or the Offshore GP (and, together with the Onshore GP, being referred to herein as the General Partners), acting as general partners of Icahn Partners LP, or the Onshore Fund, and the Offshore Master Funds (as defined below). We also acquired the general partnership interest in Icahn Capital Management LP, or New Icahn Management, a Delaware limited partnership. Prior to January 1, 2008, the General Partners and New Icahn Management provided investment advisory and certain management services to the Private Funds (as defined below). Effective January 1, 2008, in addition to providing investment advisory services to the Private Funds, the General Partners provide or cause their affiliates to provide certain administrative and back office services to the Private Funds that had been previously provided by New Icahn Management. The General Partners do not provide such services to any other entities, individuals or accounts. Interests in the Private Funds are offered only to certain sophisticated and accredited investors on the basis of exemptions from the registration requirements of the federal securities laws and are not publicly available. As referred to herein, the Offshore Master Funds consist of (i) Icahn Partners Master Fund L.P., (ii) Icahn Partners Master Fund II L.P. and (iii) Icahn Partners Master Fund III L.P. The Onshore Fund and the Offshore Master Funds are collectively referred to herein as the Investment Funds.

The Offshore GP also acts as general partner of certain funds formed as a Cayman Islands exempted limited partnership that invests in the Offshore Master Funds. These funds, together with other funds that also invest in the Offshore Master Funds, constitute the Feeder Funds and, together with the Investment Funds, are referred to herein as the Private Funds.

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Globally markets were down approximately 40% in fiscal 2008. We believe that the factors that contributed to the distressed market conditions during fiscal 2008 included, but were not limited to, constrained credit markets, de-leveraging by global financial institutions and a global recession. These conditions contributed to price volatility and declining asset values which negatively impacted the Private Funds performance, particularly during the second half of fis