

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28484; 813-365]

Wortham Finance, L.P. et al.; Notice of Application

November 10, 2008

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the “Act”) granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

Summary of the Application: Applicants request an order to exempt a vehicle formed for the benefit of certain eligible current employees of John L. Wortham & Son, L.P. (“Insurance LP”) from certain provisions of the Act. The vehicle will be an “employees’ securities company” as defined in section 2(a)(13) of the Act.

Applicants: Wortham Finance, L.P. (“Finance LP”), JLW Finance, L.L.C. (“Finance GP”), J. Wortham, L.L.C. (“Insurance GP”) and Insurance LP (together with any business organization that results solely from a reorganization of Insurance LP into a different organizational structure or into an entity organized under the laws of another jurisdiction, “Insurance LP”). Insurance LP, Finance LP, Finance GP and Insurance GP are collectively referred to herein as the “Firm”.

Filing Dates: The application was filed on April 10, 2007 and amended on December 5, 2007 and October 30, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 8, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-1090. Applicants, 2727 Allen Parkway, Suite 2400, Houston, Texas 77109-2115.

For Further Information Contact: Shannon Conaty, Senior Counsel, at (202) 551-6827, or Janet M. Grossnickle, Assistant Director, at (202) 551-6821, (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F St., NE, Washington, DC 20549-1520 (tel. 202-551-5850).

Applicants' Representations:

1. Founded in 1915, Insurance LP, a Texas limited partnership, is the largest independent insurance broker in Texas with headquarters in Houston and offices in Addison, Austin, Dallas, Fort Worth and San Antonio. Insurance LP offers a comprehensive portfolio of services, including insurance brokerage, claims management, loss control, risk management consulting, personal life insurance and employee benefits to public and private companies, professional practices and individuals engaged in an extensive range of industries. Since its inception, Insurance LP has been an independent, privately-owned entity. In 1965, Insurance LP

was purchased from its founders, Gus Wortham and other selling founders, by a new generation of partners, thus beginning a cyclical succession of ownership that continues today. Prior to December 1, 2003, when an Insurance LP partner sold all or a portion of his or her partnership interest in Insurance LP, the Insurance LP Executive Committee (as defined below) designated either a new or existing partner to buy such interest. On December 1, 2003, Insurance LP was restructured and two new limited partnerships were formed, Insurance LP and Finance LP.

2. Insurance LP conducts the traditional insurance business of the Firm while Finance LP buys and sells ownership interests in the Firm. The two new limited partnerships, and the corresponding limited liability companies created to be the general partners of such limited partnerships, Insurance GP and Finance GP, are owned directly or indirectly by each equity partner of the Firm in the same proportion as their pre-restructuring ownership in Insurance LP. Limited partnership interests in Insurance LP and membership interests in Insurance GP may only be transferred together (such interests, the “Insurance Units”). Limited partnership interests in Finance LP and membership interests in Finance GP may only be transferred together (such interests, the “Finance Units”, and together with the Insurance Units, “Units”).

3. Finance LP is a Texas limited partnership. Finance LP operates as a non-diversified, closed-end management investment company. Finance LP has been established to facilitate the purchase or sale of Units. Finance GP, a Texas limited liability company, serves as the sole general partner of Finance LP. Finance GP has delegated all management functions for Finance LP to an executive committee (the “Finance GP Executive Committee”) composed of managing members of Finance GP elected by a majority of the individuals and entities which

currently own Units (“Unitholders”). Insurance GP, a Texas limited liability company, serves as the sole general partner of Insurance LP. Insurance GP has delegated all management functions for Insurance LP to an executive committee (the “Insurance GP Executive Committee”) composed of managing members of Insurance GP elected by a majority of the Unitholders. All the members of the Finance GP Executive Committee and the Insurance GP Executive Committee are Unitholders. The Finance GP Executive Committee will be the sole manager of Finance LP and make all investment and other operational decisions for Finance LP. Finance GP or any person involved in the operation of Finance LP will register as an investment adviser if required under the Investment Advisers Act of 1940 (“Advisers Act”), or the rules under it.

4. Unitholders and Eligible Unitholders (as defined below) are required to buy and sell their Insurance Units and Finance Units simultaneously. Finance LP is responsible for (a) purchasing Units from Unitholders, (b) issuing its own promissory notes for such purchases, (c) selling Units acquired by it to Eligible Unitholders, (d) accepting promissory notes from Eligible Unitholders purchasing Units, (e) holding and managing investments in certain marketable securities and other assets, and (f) handling the administration of such activities.

5. Units will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the “Securities Act”) or Regulation D under the Securities Act, and will be offered solely to Eligible Unitholders. Eligible Unitholders must be (a) persons who are, at the time of investment, current employees of Insurance LP (“Wortham Employees”) but who are not yet Unitholders, (b) persons who are, at the time of investment, current Wortham Employees and who are Unitholders, (c) persons who are highly-experienced individual insurance professionals who laterally join Insurance LP (“Lateral Partners”), or (d) a limited partnership,

corporation or other business entity all of the voting power of which is controlled by such Lateral Partners (“Lateral Partner Investment Vehicle”). In order for a Lateral Partner Investment Vehicle to be an “Eligible Unitholder”, it must qualify as either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which a Lateral Partner is a settlor and principal investment decision-maker.<sup>1</sup> In order for a Wortham Employee or Lateral Partner to qualify as an “Eligible Unitholder”, that person must be a person who is, at the time of investment, a current Wortham Employee or Lateral Partner who (a) meets the standards of an “accredited investor” set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, or (b) is one of 35 or fewer current Wortham Employees or Lateral Partners who meets certain requirements (“Category 2 investors”).

6. Each Category 2 investor will be a current Wortham Employee or Lateral Partner, who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act and who (a) has a college education and/or has had a minimum of five years of business and/or professional experience in the insurance and risk management industries, and (b) has had compensation of at least \$80,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least \$140,000 in each of the two immediately succeeding 12 month periods.

7. Prior to offering Units to an individual, the Insurance GP Executive Committee and the Finance GP Executive Committee must reasonably believe that the individual is a

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<sup>1</sup> If a Lateral Partner Investment Vehicle is an entity other than a trust, the reference to “settlor” shall be construed to mean a person who created the vehicle, alone or together with others, and who contributed funds or other assets to the vehicle.

sophisticated investor capable of understanding and evaluating the risks of investing in the Firm without the benefit of regulatory safeguards.

8. Finance LP is a financing vehicle intended to create an opportunity for Eligible Unitholders to become owners in the Firm when they might not have otherwise been able to make immediate full payment of the purchase price of the Units. Eligible Unitholders who are individuals acquire Units by executing a non-recourse 10-year promissory note bearing interest at prime rate (but not exceeding 10%) to Finance LP in a face amount equal to (i) a fixed formula price calculated monthly for the Insurance Units (as determined in accordance with the terms of the Insurance Units transfer agreement) multiplied by the total number of Insurance Units purchased and sold plus (ii) a fixed formula price calculated monthly for the Finance Units (as determined in accordance with the terms of the Finance Units transfer agreement) multiplied by the total number of Finance Units purchased and sold (together, the “Formula Price”). Eligible Unitholders that are S corporations contribute their net insurance brokerage business assets as tax-free contributions to Insurance LP in exchange for newly issued Units and execute 10-year promissory notes for any shortfall in their pro-rata share of the combined equity in the Firm.

9. Each selling Unitholder currently receives a non-recourse 10-year prime rate (not to exceed 10%) bearing promissory note in an amount equal to the Formula Price for the number of Units sold. Through a credit facility with a local financial institution (the “Credit Facility”), Finance LP provides letter of credit enhanced promissory notes to selling Unitholders in exchange for their Units. All promissory notes for Eligible Unitholders contain a pre-payment provision exercisable at the option of Finance LP. On rare occasions, cash is

paid for the Units acquired from selling Unitholders.

10. To secure full and complete payment and performance of the obligations under the Credit Facility, Finance LP must grant the lender a first priority security interest in certain collateral held by Finance LP. Such collateral is comprised of a portfolio consisting of high quality fixed income securities, including municipal bonds (rated AA or better) and U.S. Treasury and Agency securities (rated AAA), and registered money market funds operating in compliance with rule 2a-7. The Finance GP Executive Committee selects one or more investment advisers registered under the Advisers Act to manage Finance LP's portfolio based on such adviser's overall level of professional experience and its conservative value preservation strategies. Neither the Credit Facility nor any other borrowing by Finance LP from a bank or other financial institution would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of Finance LP (other than short-term paper). Any borrowings by Finance LP will be non-recourse other than to the Firm.

11. The terms of the Units will be fully disclosed in the private placement memorandum of the Firm, and each Eligible Unitholder will receive a private placement memorandum, Finance LP's limited partnership agreement and Insurance LP's limited partnership agreement (or other organizational documents) prior to his or her investment in the Units. Finance GP will send Unitholders annual reports of the Firm, which will contain audited financial statements, as soon as practicable after the end of each fiscal year, but no later than 180 days after the fiscal year end. In addition, as soon as practicable after the end of each fiscal year of the Firm, Finance GP shall send a report to each person who was a Unitholder at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the

preparation by the Unitholder of his or her federal and state income tax returns and a report of the investment activities of Finance LP during such year.

12. Unitholders will be permitted to transfer Units only by operation of law, to a receiver or trustee in bankruptcy for that Unitholder, to the Unitholder's estate in the event of his or her death, or with the express consent of both the Insurance GP Executive Committee and the Finance GP Executive Committee. No person may become a transferee or substitute Unitholder unless that person is a member of one of the classes of persons listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold Units in order to settle the estate of a decedent or bankrupt or for similar purposes. No fee of any kind will be charged in connection with the sale of Units.

13. No separate management fee will be charged to Finance LP by Finance GP, and no compensation will be paid by Finance LP or by Unitholders to Finance GP for its services.

14. Finance LP will not acquire any security issued by a registered investment company if immediately after the acquisition Finance LP would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis:

1. Section 6(b) of the Act provides, in part, that the Commission may exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the



company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting Finance LP from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to the extent necessary permit Finance LP to: (a) purchase, from the Firm or any affiliated person thereof, Units for the account of the Firm or any affiliated person thereof; or (b) sell, to the Firm or any affiliated person thereof, Units previously acquired

by Finance LP.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that Unitholders will be informed in the Firm's private placement memorandum of the possible extent of Finance LP's dealings with the Firm or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Unitholders will be able to evaluate the attendant risks. Applicants assert that the community of interest among Unitholders and the Firm will provide the best protection against any risk of abuse.

5. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f-2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f-2 to permit the following exceptions from the requirements of rule 17f-2: (a) the promissory notes and non-publicly traded securities held by Finance LP may be kept in the locked files of Finance LP; (b) for purposes of paragraph (d) of the rule, (i) employees of the Firm will be deemed employees of Finance LP, (ii) officers of Finance GP (including the Finance GP Executive Committee) will be deemed to be officers of Finance LP, and (iii) the Finance GP Executive Committee will be deemed to be the board of directors of Finance LP; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Firm. Applicants assert that the promissory notes and non-publicly traded securities held by Finance LP are most suitably kept in Finance LP's files, where they can be referred to as necessary. The publicly traded securities owned by Finance LP are held in one or more brokerage accounts.

6. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g-1 requires that a majority of directors who are not interested persons (“independent directors”) take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g-1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company’s board of directors. Paragraph (h) of rule 17g-1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g-1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act. Rule 17g-1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0-1(a)(7). Applicants request an exemption from section 17(g) and rule 17g-1 to the extent necessary to permit Finance LP to comply with rule 17g-1 without the necessity of having a majority of the independent directors take such action and make such approvals as are set forth in the rule. Specifically, Finance LP will comply with rule 17g-1 by having the GP Finance Executive Committee take such actions and make such approvals as are set forth in rule 17g-1. Applicants state that, because Finance GP will be an interested person of Finance LP, Finance LP could not comply with rule 17g-1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g-1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g-1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as

applied to Finance LP. The Finance GP Executive Committee will maintain the materials otherwise required to be filed with the Commission by rule 17g-1(g) and agree that all such material will be subject to examination by the Commission and its staff. The Finance GP Executive Committee will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as Finance LP will not have a board of directors. Finance LP will comply with all other requirements of rule 17g-1.

7. Section 17(j) and paragraph (b) of rule 17j-1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j-1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to Finance LP.

8. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to Finance LP and would entail administrative and legal costs that outweigh any benefit to Unitholders. Applicants request exemptive relief to the extent necessary to permit Finance LP to report annually to Unitholders. Applicants also request an exemption from section

30(h) to the extent necessary to exempt the Finance GP Executive Committee and any other persons who may be deemed members of an advisory board of Finance LP from filing Forms 3, 4 and 5 under section 16 of the under the Securities Exchange Act of 1934 with respect to their ownership of Units. Applicants assert that, because there will be no trading market and the transfers of Units will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

9. Rule 38a-1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Finance LP will comply with rule 38a-1(a), (c) and (d), except that (i) since Finance LP does not have a board of directors, the Finance GP Executive Committee will fulfill the responsibilities assigned to a board of directors under the rule, and (ii) since the Finance GP Executive Committee does not have any independent members, approval by a majority of the independent board members required by rule 38a-1 will not be obtained.

Applicants' Conditions:

The applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction to which Finance LP is a party otherwise prohibited by Section 17(a) (each, a "Section 17 Transaction") will be effected only if the Finance GP Executive Committee determines that: (a) the terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to Unitholders and do not involve overreaching of Finance LP or Unitholders on the part of any person concerned; and (b) the

Section 17 Transaction is consistent with the interests of the Unitholders, the Firm's organizational documents and the Firm's reports to its Unitholders.

In addition, the Finance GP Executive Committee will record and preserve a description of such Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefore. All such records will be maintained for the life of Finance LP and at least six years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. Finance GP will send to each person who was a Unitholder at any time during the fiscal year then ended audited financial statements with respect to the Firm. At the end of each fiscal year, the Firm will make a valuation or have a valuation made of all of the assets of Finance LP as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by Finance LP. Consistent with the Firm's customary practice, Units will be valued in accordance with the terms of the Transfer Agreements. In addition, as soon as practicable after the end of each fiscal year of the Firm, Finance GP shall send a report to each person who was a Unitholder at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Unitholder of his or her federal and state income tax returns and a report of the investment activities of Finance LP during such year.

3. Finance LP and the Finance GP Executive Committee will maintain and preserve, for the life of Finance LP and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and

annual reports of the Firm to be provided to Unitholders, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon  
Acting Secretary