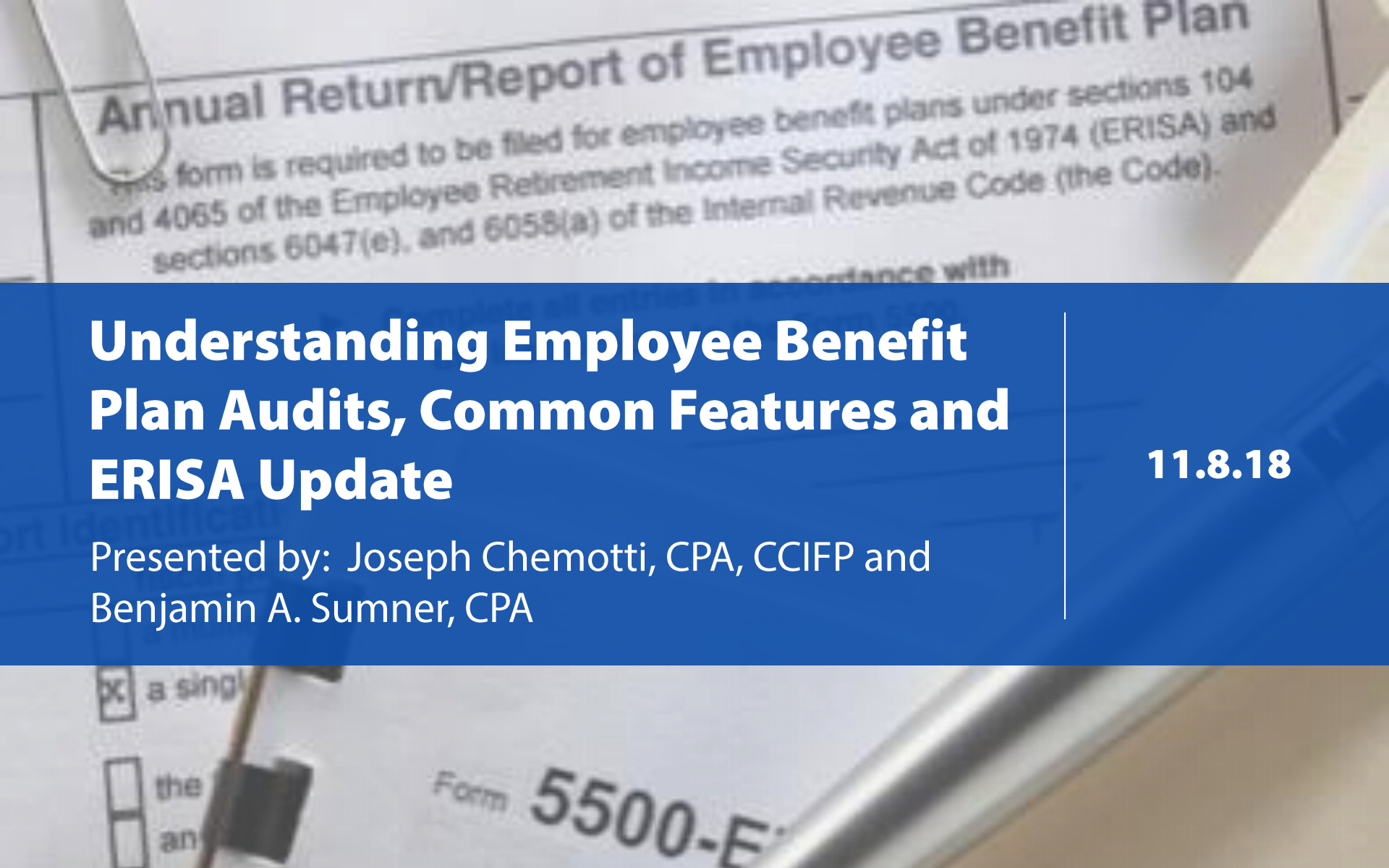




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Annual Return/Report of Employee Benefit Plan
This form is required to be filed for employee benefit plans under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6047(e), and 6058(a) of the Internal Revenue Code (the Code).

Understanding Employee Benefit Plan Audits, Common Features and ERISA Update

11.8.18

Presented by: Joseph Chemotti, CPA, CCIFP and Benjamin A. Sumner, CPA

Form **5500-E**

... Understanding Employee Benefit Plan Audits, Common Features and ERISA Update

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... Outline

1. Audit process.
2. Current trends in employee benefit plans.
3. Common errors and mistakes.
4. Suggestions to improve plan governance.
5. Regulatory update.
6. IRS and DOL correction program overview.

#1: Audit Process

... Audit Process – General Statistics

- Nearly **700,000** defined contribution and defined benefit retirement plans in the U.S.
- Defined contribution plans make up over **93%** of pension plans.
- Nearly **135,000,000** total participants in retirement plans.
- Over **\$8 Trillion** in retirement plan assets.
- Approximately another **55,000** health and benefit plans, including self-insured.

... Audit Process – General Statistics

- May 2015 – DOL released 193 page study assessing **Employee Benefit Plan Audit Quality**.
- Over **81,000** benefit plan filings with audited financial statements.
- Over **7,000** different CPA firms performing benefit plan audits.
- DOL found that **39%** of audits contained major deficiencies.
- Over **50%** of firms performing benefit plan audits **only audit 1-2** benefit plans, but have a **76% deficiency rate**.
- The study shows that firms with a **greater** number of **audits** performed have a **lower chance of deficiencies**.
- The moral of the story: **The DOL is paying attention** to what is being filed!

... Audit Process - Requirement

- **All Benefit Plans Are Required To File Form 5500.**
 - **Form 5500-SF (Short Form):**
 - Under 100 participants (Small Plan).
 - **Standard Form 5500:**
 - 100 or more participants (Large Plan).
 - **Schedule H** must be completed if assets held at year-end.
 - **Audited** financial statements required to be attached.

... Audit Process - Requirement

- **Filing Deadline:**

- 7 months after year-end (July 31 for calendar year ends).
- Extension (Form 5558) available for additional 2½ months (October 15).
- **OR** Automatic extension to plan sponsor corporate tax return extension:
 - March 15 (S-Corp, Partnerships), April 15 (C-Corp).

DON'T MISS
THE DEADLINE!

... Audit Process - Headcount

- **Who Is Considered A Participant In A Plan?**
 - All employees actively participating.
 - All eligible employees, not actively participating.
 - All inactive (terminated) individuals with account balances.



.... Audit Process - Headcount

5	Total number of participants at the beginning of the plan year	5	
6	Number of participants as of the end of the plan year unless otherwise stated (welfare plans complete only lines 6a(1), 6a(2), 6b, 6c, and 6d).		
a(1)	Total number of active participants at the beginning of the plan year	6a(1)	
a(2)	Total number of active participants at the end of the plan year	6a(2)	
b	Retired or separated participants receiving benefits	6b	
c	Other retired or separated participants entitled to future benefits	6c	
d	Subtotal. Add lines 6a(2), 6b, and 6c	6d	
e	Deceased participants whose beneficiaries are receiving or are entitled to receive benefits	6e	
f	Total. Add lines 6d and 6e	6f	
g	Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item)	6g	

... Audit Process - Headcount

80 – 120 Participant Rule:

Number of Participants at Beginning of Year	Previous Year Form 5500	Current Year Form 5500
< 80	Small Plan	Small Plan
< 80	Large plan	Small Plan
80 - 99	Small Plan	Small Plan
100 - 120	Small Plan or switch to Small Plan	May elect Large plan
> 120	Large Plan	Large Plan
> 120	Small Plan	Large Plan

... Audit Process - Scope

- **Limited Scope Audit:**

- DOL allows limited scope audit of investments.
- Investment Custodian/Trustee provides **certification statement** that investment information is "Complete and Accurate".
- Investments are not tested.
- Disclaimer of audit opinion.

- **Full Scope Audit:**

- Investments are tested.
- Full audit opinion.



Audit Process - Scope

Audit Aspects	Full Scope Audit	Limited Scope Audit
Provides auditor's opinion on plan's financial statements	Yes (unqualified, qualified, or adverse opinion)	No (disclaimer of opinion)
Auditor audits plan investments	Yes. Auditor tests for completeness and accuracy	No. Plan sponsor instructs auditor not to test investments (including the value of the investments and any income thereon) that are covered by the certification (including hard to value assets).
Requires addressing hard to value asset issues for financial reporting	Yes	Yes, except the auditor does not evaluate internal controls for certified investments and generally cannot evaluate whether the plan's financial statements overall are presented in accordance with GAAP due to the significance of the certified investment reported but not audited.
Audit scope includes testing of participants records, contributions, benefit payments, internal controls over financial reporting, and overall presentation of financial statements	Yes	Yes, except the auditor does not evaluate internal controls for certified investments and generally cannot evaluate whether the plan's financial statement overall is presented in accordance with GAAP due to the significance of the certified investments reported but not audited.
Fraud evaluation	Auditor obtains reasonable, but not absolute, assurance that the financial statements are not materially misstated due to fraud. Not all fraud may be detected in an audit. A well-concealed or insignificant fraud may avoid detection.	Same as a full scope audit except the auditor does not test certified investments for possible fraud; thus any fraud, with respect to certified investments, would likely avoid detection by the plan's auditor.
Audit identifies any internal control, compliance, or operational issues	Yes. Significant matters detected by the auditor are reported to those charged with plan governance.	Same as a full scope audit except that matters related to certified investments are not tested by the auditor.

... Audit Process - Procedures

• What Is Being Audited??

- Investments (if necessary!)
- Participant data:
 - Demographics (DOB, DOH, DOT, SSN) .
 - Payroll (Timecards, payrates, elective deferrals).
 - Compensation.
 - Eligibility and enrollment in accordance with plan provisions.
 - Confirmation with participants.
- Contributions:
 - Reconcile payroll records to the trust.
 - Timely remittance of any employee contributions.
 - Tested for compliance with plan provisions.



... Audit Process - Procedures

- Participant loans:
 - Traced to source documents (Electronic vs. Paper, Confirmation).
 - Tested for compliance with plan provisions (i.e. Loan Program).
- Benefit payments:
 - Traced to source documents (Electronic vs. Paper, Confirmation).
 - Tested for compliance with plan provisions.
- Administrative expenses:
 - Benchmarking.
 - Section 408b2 and 404a5 reporting.
- Actuarial valuations (DB Plans).

#2: Current Trends in Employee Benefit Plans

... Current Trends In Employee Benefit Plans

- **Safe Harbor** plans provide for certain required minimum contributions to defined contribution plans.
 - **Pros of Safe Harbor plans:**
 - Fewer compliance tests – Plan is exempt from ADP/ACP testing and Top-Heavy testing in certain cases.
 - Generous employer contributions to eligible employees
 - Highly compensated employees can defer the maximum without risk of corrective distribution.
 - Vesting rules for employer contributions:
 - Immediate.
 - 2-year cliff.

... Current Trends In Employee Benefit Plans

➤ Cons of Safe Harbor plans:

- Can be more expensive
- Administration:
 - Annual notices by December 1st.
 - New Safe Harbor provisions cannot be adopted mid-year.
 - Plan document requirements.
- Vesting rules for employer contributions (!):
 - Immediate.
 - 2-year cliff.

... Current Trends In Employee Benefit Plans

- **Automatic Enrollment Features** (some w/ 1% annual step-up).
 - Maintain opt-out forms.
 - Watch required entry date and step up date!
 - Must offer a Qualified Default Investment Option (QDIA) such as Target-Date Funds:
 - **Target-Date Fund** investment options:
 - Designed to reflect expected retirement date.
 - A portfolio within a fund.
 - Investment slowly becomes less risky through target date.

Safe Harbor Plans: Traditional vs. Auto-Enroll

	Traditional Safe Harbor Matching	Traditional Safe Harbor Non-Elective	Safe Harbor Automatic Enrollment Program (QACA)
Enrollment	Elective	Elective	Automatic (must opt out)
Employee Deferrals	Discretionary	Discretionary	At least 3% w/ 1% increase annually to at least 6%
Employer Contributions	At least Match 100% of first 3%, plus 50% of 3%-5% (4%), can be greater	Contribute 3% of compensation for <u>ALL</u> participants, even those not deferring	Either 3% nonelective <u>OR</u> Match 100% of 1% and 50% of 2%-6% (3.5% max)
Vesting	Immediate 100%	Immediate 100%	2-Year Cliff (or less)

#3: Common Errors and Mistakes

... Common Errors and Mistakes

1. Failure to timely remit contributions to the trust.
2. Failure to properly enroll eligible participants.
3. Use of incorrect definition of compensation.
4. Incorrect calculation of deferrals and matching contributions.
5. Failure to maintain documentation of participant elections and approved pay rates.

(Continued)

... Common Errors and Mistakes (Continued)

6. Plan not operating within the provisions of the plan document.
7. Failure to timely file proper Form 5500.
8. Inaccurate data provided to third-party administrator for purposes of non-discrimination testing.
9. Plan document not updated to reflect recent law changes:
 - Determination letter considerations.

#4: Suggestions to Improve Plan Governance

... Suggestions to Improve Plan Governance

1. **Maintain Board minutes:**

- At least annually.

2. **Document discretionary provisions:**

- Matching percentages.
- Profit sharing contributions.
- Loan interest rates.
- Discount rate for pension benefit obligation.

3. **Maintain formal investment policy:**

- Specify governing body.
- Document the classes and types of investments.
- Criteria for watchlist, performance objectives.

... Suggestions to Improve Plan Governance

4. Consider using a third-party administrator (TPA):

- Monitor plan compliance.
- Prepare and file Form 5500.
- Perform required non-discrimination testing.
- **HOWEVER:** Important to ensure data provided to TPA is accurate!
- Some Trustee/Custodial agreements include TPA duties.

5. Monitoring of investment fees:

- Are your plan's fees unusually high compared to similar plans?
- How are fees paid? (Directly by plan? Plan sponsor? Through investment returns?)
- Are participant and employer fee disclosures communicated timely?
- Potential new Fiduciary rules being evaluated by the Trump administration.

... Suggestions to Improve Plan Governance

6. Evaluate plan auditor:

- DOL is reviewing audit quality!
- How many plans does your CPA firm audit?
- Is your plan's auditor a member of the AICPA Employee Benefit Plan Audit Quality Center (EBPAQC)?

7. Obtain and review SOC reports from service providers:

- Investment Custodian/Trustee, payroll provider, others involved.
- Reports on internal controls at service organizations.
- Specifically internal controls affecting the financial reporting process.
- Auditor concludes on design and operation of controls.

... Suggestions to Improve Plan Governance

8. Cybersecurity:

- How is participant personally identifiable information (PII) protected from theft?
- Is the Plan Sponsor doing a good job in house protecting this information?
- Are third party service providers also doing their part?
- If PII is stolen, who is responsible?
- Important to perform internal cybersecurity risk analysis!

#5: Regulatory Update

Regulatory Update – Pension Limits

2019 Pension Limits:

	2019	2018	2017
401k Elective Deferrals (Section 402g)	\$ 19,000	\$ 18,500	\$ 18,000
Catch-Up Contribution Limit (Section 414v)	\$ 6,000	\$ 6,000	\$ 6,000
Annual Defined Contribution Limit (Section 415)	\$ 56,000	\$ 55,000	\$ 54,000
Annual Compensation Limit (Sections 401, 404, 408)	\$ 280,000	\$ 275,000	\$ 270,000
Social Security Wage Base	\$ 132,900	\$ 128,400	\$ 127,200
SIMPLE Employee Deferrals	\$ 13,000	\$ 12,500	\$ 12,500
SIMPLE Catch-Up Deferrals	\$ 3,000	\$ 3,000	\$ 3,000

Regulatory Update – Determination Letters

- **New IRS Determination Letter Program**

- Revenue Procedure 2016-37.
- Eliminates the 5-year remedial amendment cycle system for **Individually Designed Plans (IDP).**
- Effective January 1, 2017, determination letter applications for IDP's only permitted for the following:
 - Initial plan qualification.
 - Qualification upon termination.
 - Certain other circumstances may also apply (significant law changes, new plan design approaches, etc...)

Regulatory Update – Determination Letters

- IRS will issue an annual **Required Amendment List** (RA List) after October 1, detailing amendment required to retain tax qualified status.

<https://www.irs.gov/retirement-plans/required-amendments-list>

- Required plan amendments must be adopted by the **end of the second calendar year** following the year the RA List is published .

... Regulatory Update – Determination Letters

- To assist, IRS intends to provide annual **Operational Compliance List** to identify changes in qualification requirements.
- Ultimately will be the responsibility of **plan management** to ensure plan is properly amended for regulatory changes.
- Consider adopting pre-approved prototype or volume submitter plan:
 - Pre-approved plans continue to be on 6-year cycle for determination letters.

... Regulatory Update – Audit Reports

- **Employee Benefit Plan ERISA Audits – Revisions to Auditor's Report, Proposed New AU-C section (703):**
 - Meant to enhance audit quality and provide better insight into responsibilities of management and the auditor.
 - Proposed SAS includes:
 - Form and content of unmodified opinion;
 - Procedures and new opinion for ERISA limited scope audit; and
 - Procedures and **reporting requirements on findings** related to testing specific plan provisions.

#6: IRS and DOL Correction Program Overview

... Correction Programs

What Parties Are Involved?

- **IRS:**
 - Establishes tax-qualified status.
 - Primarily monitors plans (audits) for adherence to tax code.
- **DOL:**
 - Employee Benefit Security Administration (EBSA).
 - Primarily monitors plans (audits) for adherence to ERISA.

... Correction Programs

IRS and DOL Have Their Own Separate Correction Programs!

- IRS program is called Employee Plans Compliance Resolution System (EPCRS).
- EPCRS provides three ways to correct mistakes:
 - Self Correction Program (SCP).
 - Voluntary Correction Program (VCP).
 - Audit Closing Agreement Program (Audit CAP).

... Correction Programs

IRS Self Correction Program (SCP)

- Allows a plan to self correct **without contacting the IRS or paying a fee**; no application or reporting requirements.
- **Significance** of error will determine remedy and depends on facts and circumstances including:
 - Other failures in the same period (not how many people are affected).
 - Percentage of plan assets and contributions involved.
 - Number of years it occurred.
 - Participants affected relative to the total number in the plan.
 - Participants affected relative to how many could have been affected.
 - Whether correction was made soon after discovery.
 - Reason for the failure.

... Correction Programs

IRS Voluntary Correction Program (VCP)

- VCP allows for all types of corrections at any time.
- VCP process requires providing supporting documentation and submission of forms to the IRS:
 - Filing of **Forms 8950** (app. & info.) and **8951** (user fee calculation).
 - IRS issues a Compliance Statement detailing mistake and providing correction method.
 - Plan Sponsor has 150 days from issuance of Compliance Statement to correct.
- **UPDATE: Rev Proc. 2018-52**
 - Beginning April 1, 2019, **all** VCP submissions must be made through [pay.gov](https://www.pay.gov).

... Correction Programs

IRS Audit Closing Agreement Program (Audit CAP)

- Only if Plan or Plan Sponsor is under audit with IRS which resulted in identification of a plan Failure.
- Plan Sponsor enters into a Closing Agreement with IRS.
- Correction is made prior to entering into the Closing Agreement
- **Sanction** is negotiated with IRS and paid.

... Correction Programs

DOL Has Two Correction Programs!

- Delinquent Filer Voluntary Compliance Program (DFVC):
 - Specifically related to Form 5500 filing requirements.
- Voluntary Fiduciary Correction Program (VFC):
 - Allows plan sponsors and fiduciaries to correct fiduciary violations.

... Correction Programs

DOL Delinquent Filer Voluntary Compliance Program (DFVC)

- DFVCP Not Available if DOL has already been notified of failure.
- **Filing is two-part process:**
 1. File Form 5500 and schedules, Check box on line D of Part I for DFVC.
 2. Pay the penalty! CANNOT PAY OUT OF PLAN ASSETS!

Correction Programs

DOL Delinquent Filer Voluntary Compliance Program (DFVC)

- Small plans (1 plan year) - \$10 per day up to \$750
- Small plans (multiple plan years) - \$1500 per submission
- Large plans (1 plan year) - \$10 a day up to \$2,000
- Large plans (multiple plan years) - \$4,000 per submission
- Tax Exempt plans (all plan years) - \$10 per day up to \$750
- “Top hat “ plans - \$10 per day up to \$750
- **Note:** extensions are not considered when calculating penalties

... Correction Programs

DOL Voluntary Fiduciary Correction Program (VFC)

- Example plan transactions covered by VFC:
 - Delinquent contributions and loan repayments.
 - Improper loan interest rates to Parties-in-Interest.
 - Loan amounts in excess of Plan Limitations.
 - Loan duration in excess of Plan Limitations.
 - Duplicative, excessive or unnecessary compensation paid.
 - Purchases/sales of assets from/to Party-in-Interest.

... Correction Programs

DOL Voluntary Fiduciary Correction Program (VFC)

- Must file application with DOL through EBSA including:
 - Detailed narrative of error and correction.
 - Supporting documentation.
 - Penalty of Perjury Statement.
 - Signed and Completed Checklist.
- VFC provides specific correction methods including how to calculate **earnings and losses**.



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