

189—17.5 (533) Discretionary control over investments and investment advisers.

17.5(1) Except as provided in 17.5(2), 17.5(3) and 17.5(4), a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

17.5(2) A credit union may delegate discretionary control over the purchase and sale of investments to a person other than a credit union official or employee:

a. Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

b. Provided the amount of investment authority does not exceed 100 percent of the credit union's net worth, in the aggregate, at the time of delegation.

17.5(3) At least annually, the credit union must adjust the amount of funds held under discretionary control to comply with the 100 percent of net worth cap. The credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled monthly board meeting, of the amount exceeding the net worth cap and notify in writing the superintendent within five days after the board meeting. The credit union must develop a plan to comply with the cap within a reasonable period of time.

17.5(4) Before transacting business with an investment adviser, a credit union must analyze the investment adviser's background and information available from state or federal securities regulators, including any enforcement actions against the adviser, associated personnel, or the firm for which the adviser works.

17.5(5) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per-transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

17.5(6) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and the investments' performance.