§ 1407. Non-reserve and prohibited investments for property/casualty and certain other insurers. (a) Any insurer that makes investments under the authority of subsection (c) of section one thousand four hundred three of this article and meets the requirements of such subsection (c) and section one thousand four hundred two of this article may invest in, or otherwise acquire or loan upon, directly or indirectly, any of the types of investments described in section one thousand four hundred four of this article, but without having to meet the applicable qualitative standards or quantitative limitations which are set forth in subsection (a) of section one thousand four hundred four of this article, except the following prohibited investments:

(1) Obligations, shares or other securities of any institution which is insolvent at the time of the investment.

(2) Obligations secured by real property or real property or interest therein, which are either not eligible under or which exceed the investment limitations under paragraph four or five of subsection (a) of section one thousand four hundred four of this article.

(3) Shares of stock of the investing insurer, except to the extent permitted by the provisions of subsection (d) of section one thousand four hundred eleven of this article.

(4) Obligations, shares or other securities (including certificates of deposit) issued by a parent corporation or a corporation which is an affiliate or will be an affiliate after direct or indirect acquisition by the insurer. Nothing in this paragraph shall be deemed to prevent any investment in obligations, shares or other securities of:

(A) another insurance corporation within the limitations prescribed in section one thousand four hundred eight of this article,

(B) a subsidiary organized to engage exclusively in the acquisition, ownership or management of investments of the type described in paragraphs one, two, three, six, seven, eight or ten of subsection (a) of section one thousand four hundred four of this article, provided such subsidiary is wholly-owned by two or more insurance companies domiciled in the United States who are members of the same holding company system, as such term is defined in article fifteen of this chapter. Furthermore, each individual insurer's share of the net investment made by such subsidiary shall be:

(i) computed in proportion to its equity interests in such subsidiary,

and

(ii) included when computing any applicable investment limitations, or

(C) subsidiaries subject to and within the limitations prescribed in article sixteen of this chapter.

(5) Investments made under the leeway provision, as set forth in subsection (b) of section one thousand four hundred four of this article, if the aggregate amount of such investments exceed twelve percent of the insurer's invested assets as shown by its last statement on file with the superintendent; or if the aggregate amount of investments that are neither interest-bearing nor income-paying exceed three percent of the insurer's invested assets as shown by its last statement on file with the superintendent.

(6) Obligations, shares or other securities issued by a corporation, if a majority of the shares having voting powers of such issuing corporation is owned directly or indirectly by or for the benefit of one or more officers or directors of the insurer.

(7) Foreign investments, meaning obligations, shares or other securities of any person or governmental or business unit of or in a foreign country or of any person or business unit of or in a possession of the United States, except such as conform substantially with the limitations imposed by this section upon like domestic investments; but the aggregate amount of foreign investments including obligations of American institutions payable outside of the United States and cash deposited in a bank, trust company or thrift institution located outside of the United States held at any time by such insurer under this paragraph and under paragraph six of subsection (a) of section one thousand four hundred four of this article shall not exceed the greatest of (i) twelve percent of the insurer's admitted assets as shown by its last statement on file with the superintendent, (ii) fifteen percent of the insurer's invested assets as shown by its last statement on file with the superintendent, or (iii) one and one-half times the amount of its reserves and other obligations under its insurance and reinsurance contracts on risks resident or located in such foreign countries and subdivisions thereof. An investment in the shares of an alien insurer, which results in the control of such insurer by the investing insurer, shall not be included when calculating the limitations under this paragraph, but such an investment shall only be subject to the

limitations of section one thousand four hundred eight of this article.

(8) A direct or indirect ownership interest in a risk retention group, as defined in article fifty-nine of this chapter, other than in a risk retention group all of whose members are insurance companies, in which case any investment in such a risk retention group shall be subject to the limitations prescribed in section one thousand four hundred eight of this article.

(9) Acquiring any interest in an investment through a partnership, other than an interest acquired as a limited partner in a limited partnership.

(10) Any investment found by the superintendent to be against public policy or designed to evade any prohibition of this chapter.

(b) This section shall not prohibit any such insurer from accepting securities, otherwise ineligible, which may be distributed pursuant to any judicial or lawful non-judicial plan of reorganization or dissolution.

(c) Any investment pursuant to the provisions of this section shall be subject to other requirements of law (statutory or otherwise) that affect the standard of care of directors and officers of corporations, and in making investments under this section the insurer's directors and officers shall perform their duties in good faith and with that degree of care that an ordinarily prudent individual in a like position would use under similar circumstances.