**18.15 RICO—Using or Investing Income from**

**Racketeering Activity (18 U.S.C. § 1962(a))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with using or investing income from racketeering activity in violation of Section 1962(a) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant received income, directly or indirectly, from a pattern of racketeering activity, or through collection of an unlawful debt;

 Second, the defendant used or invested, directly or indirectly, any part of that income or the proceeds of such income to [[buy an interest or invest in] [establish] [operate]] [*specify enterprise*]; and

 Third, [*specify enterprise*] was engaged in or its activities in some way affected commerce between one state and [an]other state[s], or between the United States and a foreign country.

**Comment**

 When the predicate racketeering acts are charged as separate counts in the indictment, use this instruction in combination with Instructions 18.12 (RICO—Racketeering Act—Charged as Separate Count in Indictment) and 18.14 (RICO—Pattern of Racketeering Activity). When the predicate racketeering acts are not charged as separate counts in the indictment, use this instruction in combination with Instructions 18.13 (RICO—Racketeering Act—Not Charged as Separate Count in Indictment) and 18.14 (RICO—Pattern of Racketeering Activity).

 Unlike a case in which a corporation is charged under 18 U.S.C. § 1962(c), “where a

corporation engages in racketeering activities and is the direct or indirect beneficiary of the pattern of racketeering activity, it can be both the ‘person’ and the ‘enterprise’ under section 1962(a).” *Schreiber Distrib. Co. v. Serv–Well Furniture Co.*, 806 F.2d 1393, 1396, 1398 (9th Cir. 1986).

*Revised Dec. 2016*