**18.16 RICO—Acquiring Interest in Enterprise**

**(18 U.S.C. § 1962(b))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with acquiring or maintaining an interest in or control of an enterprise in violation of Section 1962(b) 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, directly or indirectly, acquired or maintained an interest in or control of [*specify enterprise*];

Second, the defendant did so through a pattern of racketeering activity or through collection of an unlawful debt; and

Third, [*specify enterprise*] engaged in or its activities in some way affected commerce between one state and [an]other state[s] or 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).

The enterprise in which a defendant invests must be an entity distinct from the defendant.

RICO predicate acts only require a de minimus impact on interstate commerce. *United States v. Fernandez*, 388 F.3d 1199, 1218 (9th Cir. 2004); *United States v. Juv., Male*,118 F.3d 1344, 1347 (9th Cir. 1997).

Control under § 1962(b) does not require “formal control.” *Ikuno v. Yip*, 912 F.2d 306, 310 (9th Cir. 1990).