**18.17 RICO—Conducting Affairs of Commercial**

**Enterprise or Union (18 U.S.C. § 1962(c))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with having [conducted] [participated in the conduct of] the affairs of [*specify enterprise or union*] through a pattern of racketeering activity in violation of Section 1962(c) 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 was employed by or associated with [*specify enterprise or union*];

 Second, the defendant [conducted] [participated, directly or indirectly, in the conduct of] the affairs of [*specify enterprise or union*] through a pattern of racketeering activity or collection of unlawful debt. To conduct or participate means that the defendant had to be involved in the operation or management of the [*specify enterprise or union*]; and

 Third, [*specify enterprise or union*] 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 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 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 the Indictment) and 18.14 (RICO—Pattern of Racketeering Activity).

 As defined in 18 U.S.C. § 1961(4), an enterprise “includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity”; therefore, the name of the legal entity should be used when applicable.

 The enterprise cannot also be the RICO defendant when the charge is that the defendant violated 18 U.S.C. § 1962(c). *See Schreiber Distrib. Co. v. Serv–Well Furniture Co., Inc.*, 806 F.2d 1393 (9th Cir. 1986).

 *See United States v. Shryock*, 342 F.3d 948, 985-86 (9th Cir. 2003) (defining “conducts or participates” in the affairs of the enterprise).

 *See Reves v. Ernst & Young*, 507 U.S. 170, 184 (1993) (holding that liability under § 1962(c) may also extend to lower rung participants who are under the direction of upper management).

*Revised Jan. 2019*