

Owen Hodge

WELCOME FROM THE CEO



Welcome to this edition of the Owen Hodge Newsletter. Australia continues to experience turbulent financial markets and inflation is a global challenge. These issues are exacerbated by record fuel prices. The good news is that few people appear to be losing their jobs. Indeed recruitment remains a major challenge for most business owners.

In this edition we are offering a complete security package to home buyers. We have created a solution to high fees by bringing the whole legal and financial process for a home purchase under one roof. Legal costs can be as low

as \$550.00 plus expenses where funds for a mortgage are borrowed through OH Mortgage Solutions Pty Limited.

In addition home buyers are encouraged to consider personal insurance when taking out a substantial loan. There is really no excuse for the main wage earner not being adequately insured against financial disaster following personal tragedy or sickness. Insurance provides the whole family with peace of mind and Ben Graham at Owen Hodge Financial Planning Pty Ltd is able to source very good rates for personal insurance.

The Owen Hodge team will be enhanced from July with the merger with the CBD law firm of Farmer Campbell Edmunds. Richard Farmer and his team will continue to work with us joining our Australia Square office. Richard specialises in Succession Planning and Property work and brings to our firm a depth of knowledge and skill that will give strong support to our competence in these areas.

ANNOUNCEMENTS

I commenced the Conveyancing Law and Practice course through Macquarie University, Sydney in 2002 and undertook one unit per semester via correspondence. I successfully completed the course in 2006 and applied for my Conveyancers Licence in 2007.

I found that the course offered was extremely informative and the fact that the course was run via correspondence (with 2 compulsory weekend seminars) made studying very flexible and ideal for students working full time.

The subjects in course are very relevant to daily conveyancing practice and together with the practical experience received while working at Owen Hodge Lawyers, I am now equipped to advice and assist clients in my role as a Licensed Conveyancer.

Article provided by Misty Baldwin, Licensed Conveyancer at Owen Hodge Lawyers

It seems surreal that less than a year ago I was sitting in a St George Girls High uniform being inspired by the Social Science faculty and their stories of an Ex-St Georgian who claimed 1st place in the state in HSC Legal Studies. Her name is Alex Salib and it seems even more surreal that I was ranked 2nd in the same subject only to follow her (very stylish) footsteps into Owen Hodge.

I'm currently working for James Kelly while studying Commerce/ Law at Sydney University and thoroughly enjoying complimenting the reality of working in law with the (more laid back) reality of uni life. I've learned more than I could ever imagine in the space of seven months at Owen Hodge, reinforcing my choice of a potential career in Law!

Article provided by Sarah Evans, Legal Clerk at Owen Hodge Lawyers

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At all times you can feel confident Owen Hodge Lawyers will handle all matters with professionalism and efficiency. This is guaranteed with our Law 9000: Legal Best Practice certification. LAW 9000 is a new management system benchmark for legal practices. It is based on the internationally recognised standard ISO 9001 and a set of best-practice criteria specific to a legal practice.



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PRE-NUP RULED INVALID

Financial agreements under scrutiny

Some of the financial arrangements which couples have entered into since binding financial agreements – sometimes referred to as ‘pre-nups’ – became available under Australia’s family laws are under a cloud following recent court decisions.

While the intention of the law was to allow people to organise their affairs as they saw fit, the courts are concerned that the effect of a binding financial agreement can be to oust the court’s power to make overriding property adjustment orders. The Family Court has therefore taken a very strict approach in interpreting the requirements to make such agreements.

Both parties will need to receive independent legal advice with a certificate attesting to that, and both must sign a financial agreement for it to be binding.

Documenting the agreement has to follow strict rules. In a case last year, the judge said that there has to be one original, signed by both parties, and a copy. To have two copies, each signed by one party and exchanged, did not comply with the law. In this case the agreement was found to be invalid and could not be enforced.

Make sure you obtain written advice from a solicitor in advance of signing a family law financial agreement. The body of the agreement must contain a statement about the advice given. And don’t make last-minute handwritten amendments. It is better to incorporate changes into the document and then have everyone sign. Any handwritten amendments can lead to the suggestion that the agreement has been altered after the legal advice has been given.

Contact your solicitor for further help.

FAMILY LAW

NO PRESSURE TO MEDIATE WITH A VIOLENT PARTNER

Under the new family law regime, attendance at a family dispute resolution meeting is mandatory. Since July last year, no court proceedings can begin without a certificate issued by the family dispute resolution practitioner who facilitated the meeting.

However, where there has been violence in a relationship, the requirement to attempt family dispute resolution before starting proceedings does not apply, as family violence is one of a number of exceptions under the new laws.

A partner who does not wish to mediate because of domestic violence can seek the approval of the court to forego family dispute resolution. This involves an affidavit being sworn, setting out the history of the violence.

Where one or both of the partners in a parenting matter are receiving legal aid, a grant may be provided for an early intervention conference – a type of dispute resolution procedure – if the matter fulfils the means and merit test.

In the event of past violence, a legal-aid conference will only be held where an Apprehended Violence Order (AVO) permits, and both parties wish to proceed with the conference. A woman has only to advise her lawyer or the intake/screening officer that she does not wish to be involved in a conference because of domestic violence and the matter does not proceed.

Conferences can also be conducted by phone or as a ‘shuttle’, where someone will shuttle between the parties conveying proposals or offers to avoid direct communication if a party feels intimidated, even if there is no AVO.

REGAINING POWER

A feature of violent relationships can be the loss of control over many aspects of a person’s life, and once they have left the relationship there are aspects of their lives they may need to regain power over, such as parenting, living arrangements, and property. These are things that can be achieved with the help of negotiation.

As a hopeful first step, participation in a negotiation with the help and experience of their solicitor may begin the long process of empowering and restoring confidence to face a future away from a previous intimidating or controlling former partner.

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LIFETIME CARE

NO-FAULT SCHEME FOR CATASTROPHICALLY INJURED

The new scheme for victims of car accidents who suffer catastrophic injuries has recently been extended to include adults. The scheme provides benefits which were previously unattainable if the person had been at fault, or partially at fault, for their own injury.

The Lifetime Care And Support Scheme became operative in October 2006 for children under 16, and was extended to adults in October 2007. It provides treatment and care for those catastrophically injured as a result of a motor car accident in NSW. There is no entitlement for anyone injured before those dates to access the scheme, which it is estimated will cover between 120 and 200 accident victims per year suffering serious spinal cord or traumatic brain injuries, multiple amputations, severe burns or legal blindness.

Effectively, those eligible will have no choice but to be part of the scheme, even if they can prove someone else was at fault in the accident, as insurers can nominate an injured person for inclusion without their consent.

This may mean that some accident victims will be adversely affected, because they may have been financially better off pursuing a claim for lump-sum compensation. Such victims will also be precluded from obtaining compensation for voluntary domestic assistance. The argument is that the scheme will cover all care needs on a paid basis, so no voluntary domestic assistance should be required.

In reality, many families will choose to continue to provide some care on an unpaid basis, which could be seen as their subsidising the scheme. The scheme may be amenable to carers being paid, subject to suitable training, which could mean carers being formally employed and receiving work benefits, such as superannuation and cover for workers compensation. However, many families may not want a formal arrangement involving taxable income.

The scheme has provision to modify existing property but none for funding the capital costs involved in purchasing a suitable house, car or computer equipment.

Nothing in the new scheme will affect the rights of accident victims who can establish fault to recover general damages, loss of earnings or other items of lump-sum compensation that are not covered by the scheme.

MOVING IN EARLY OCCUPYING A HOME BEFORE YOU SETTLE

Sometimes it suits both the seller and the buyer for the buyer to take possession of a property before settlement.

The situation is like a very short lease, and the conditions governing it are set out in a clause in the contract. Particular arrangements can be made by letters between the solicitors for the buyer and seller, or included in the contract. Normally, the seller requires an occupation fee based on a market rental for the property, and the fee is paid on settlement in addition to the balance of the purchase money. Occasionally, it is paid weekly to the agent. The contract requires rates to be adjusted from the date of possession, unless the parties agree otherwise.

A buyer occupying a property before settlement must insure the property from the date of possession, and not make any structural changes.

Wills

Who can inspect them?

New laws have come into force on who has the right to see a will.

Anyone who has possession or control of a will of someone who died after 1 March 2008 must now allow a number of people to inspect the will, or receive copies of it at their own expense.

They include anyone named or referred to in the will, whether a beneficiary or not, or anyone named or referred to in an earlier will as a beneficiary of the deceased person.

The surviving spouse, de facto partner (whether of the same or opposite sex) and children of a deceased person all have the right to see the will, as has anyone who would have been entitled to a share of the estate of the deceased person had the person died without leaving a will.

Any parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the testator if the testator had died without leaving a will; any person, including a creditor, who has or may have a claim at law or in equity against the estate of the deceased person; and an attorney under an enduring power of attorney made by the deceased person are all included.



TAX SHELTERS

PRIMARY PRODUCTION SCHEMES NOT A HAVEN

At this time of year many taxpayers turn their minds to ways to minimise tax.

At its simplest, tax planning involves either the alienation of income, perhaps through personal service entities, salary sacrificing or even more elusive offshore arrangements, or the maximising of deductions.

By this point in the year it is normally too late to implement an alienation-of-income arrangement because taxpayers will normally have derived most of their income for the

financial year. Exceptions might be expected bonuses and potential capital gains.

One class of deductions some taxpayers consider is primary production tax shelters – as often as not, for some reason, originating in WA.

These sort of shelters have involved almost every imaginable type of primary production activity, including timber, grapes, olives, macadamia nuts, blueberries, cattle, crayfish, exotic plants and cherries.

A feature of the schemes is that tax deductions are claimed for upfront management fees and for what normally would be nondeductible capital expenditure.

However, many of these schemes have been successfully attacked by the Tax Office.

One reason the schemes have not had the desired result is that often the financing of the arrangements involved round robins and non-recourse financing. This has caused the courts to find that they were entered into predominately to generate tax deductions and not for genuine commercial reasons.

Nowadays most schemes are not marketed in the absence of a binding Tax Office ‘product ruling’. The question then becomes ‘what reliance can be placed on such a ruling?’.

Rulings are normally qualified. In the case of one current scheme, the Tax Office qualified its ruling by stating that it referred to specified parts of the tax law, types of taxpayer, and, most importantly, did not apply if the scheme as implemented was materially different from that set out in the ruling.

GST PENALTIES TRAP

COME CLEAN ON SHORTFALLS, AND PROMPTLY

The Tax Office appears to be taking a punitive approach to GST shortfall amounts at the same time as placing increasing emphasis on corporate governance and tax risk management. This means more of an onus, particularly on directors and senior management, to have a genuine awareness of their GST compliance.

A taxpayer is liable to a penalty if they have a GST shortfall as a result of a statement which is “false or misleading in a material particular”. A shortfall amount is the amount by which the relevant liability, payment or credit, is less or more than it should be.

Base penalties extend from 75 per cent of the shortfall amount for intentional disregard of a tax law to 25 per cent of the shortfall for failing to take reasonable care to comply with a tax law. Once a penalty is levied, the burden of proof shifts to the taxpayer.

There are certain aggravating factors which allow the Commissioner of Taxation to increase the base penalty

by 20 per cent. These include taking steps to prevent or obstruct the Commissioner from finding out about the shortfall, and failing to give notice of the shortfall amount within a reasonable time of becoming aware of it.

Thankfully, legislation also allows for the reduction of penalties. The base penalty may be reduced by 20 per cent – or 80 per cent in certain circumstances – if the taxpayer voluntarily discloses the shortfall to the Commissioner.

The GST perils of property transactions are high. In terms of risk, the GST challenges posed by property dealings extend from the intricacies of the margin scheme and the GST-free supply of a goingconcern concession, all the way to the reporting of GST obligations.

Taxpayers seem to be becoming more combative when faced with penalties, but the Tax Office’s very high success rate in GST penalty cases serves as a warning that the area of law is a very complex one and that taxpayers must be on solid legal grounds if they decide to challenge a decision.

EVIDENCE FAILS THE TEST WHEN A SEARCH WARRANT LOSES ITS POWER

The law doesn’t allow a search warrant to be suspended and then resumed. Any evidence seized following an unlawful suspension and resumption of a search warrant can be challenged in court.

A common-or-garden search warrant – that is, not a phone or crime-scene warrant – will expire within a specified time (usually 72 hours after the time of issue) or once it is executed, whichever comes first.

By ‘executed’ is meant the moment investigating police officers physically exit the relevant premises. To suspend a search warrant and then resume it again later is not allowed.

In a recent case, five officers arrived at a woman’s home with a warrant to search for prohibited drugs. One officer entered and found a glass water pipe and a glass plate containing what police referred to in their statements as a “green vegetable tobacco mix”.

The police asked questions about ownership of the material without placing the woman under arrest and cautioning her.

Once the woman confirmed the items belonged to her and contained cannabis which she said she intended to smoke, the officers ceased searching the premises and two of them took her to the police station to be cautioned.

After this, she was returned to her home and the search was resumed, with the police reporting that more green matter was found, along with notepads with names and amounts of money written beside them, mobile phones and various amounts of cash.

However, in court the magistrate stated that the law simply does not allow for the suspension of search warrants and it could not be clearer on this issue. The reason for and length of the suspension are immaterial.

Even though the actions of the police officers seemed motivated not by malice but by a genuine concern to ensure the person was treated according to the law, the magistrate held that in suspending and resuming the search warrant, police had obtained evidence in contravention of the law. None of the evidence obtained after the search warrant was suspended was allowed.



SEEDS OF CONFLICT Potential problems with genetically modified crops

Both farmers growing genetically modified and standard crops may find themselves facing legal action if GM crops contaminate neighbouring farmers’ fields.

Genetically modified crops have had their DNA altered by genetic engineering. This is usually done to promote higher yields, faster growth times or better resistance to drought or disease.

The moratorium on the commercial planting of GM crops in NSW and Victoria has now lapsed, giving rise to a number of potential legal issues for farmers. The commercial planting of GM canola may be the first of many GM crops to come.

The need to consider liability issues arises because of concern in some quarters that GM crops may cause environmental damage through a loss of biodiversity, personal injury (through allergic reactions) and economic loss to GM-free farmers whose crops become contaminated with the GM product.

It is foreseeable that should such contamination occur, and farmers seek to take action, they may do so not only against the specific farm responsible (if it can be proved), but, potentially, against the manufacturer or distributor of the seed, or the harvesters who move from farm to farm with their equipment and who may be the source of contamination.

On the flip side, there is the issue that GM-free farmers might inadvertently grow GM crops from the spread of seed from nearby GM crops, and then be open to liability to the patent owner of the GM crop, as a Canadian farmer recently found.

Ironically, although the courts held in that case that the farmer had infringed the company’s patent, and that the company was entitled to an account of profits, it didn’t receive it, as it could not demonstrate that the GM crop had increased profits for the farmer.

A number of insurance issues may arise. If a GM farm contaminates another property, would the farmer’s public liability policy cover this, or some other cover? And, if so, under what conditions?

This would depend on the wording of each farmer’s policy, which should be considered by farmers and their advisors.

It is unclear whether an unaffected farmer would have a valid claim under a business interruption policy if no longer able to sell a GM-free crop to its intended market. It is also unclear whether a harvester’s policy would cover it for such damage to a client’s farm if it inadvertently transported GM seed to a GM-free farm.



VOLATILITY SURVIVAL TIPS

HOW TO DEAL WITH VOLATILITY, AND WHY IT SHOULD NOT DISTRACT LONG TERM INVESTORS

Markets have taken Australian investors on a wild ride in recent times. The old adage “what goes up must come down” could probably be updated. These days, what goes up not only comes down, but also goes back up and comes back down yet again. It’s called market volatility, and more often than not, how we react to volatility can determine whether or not we make a profit. In this edition of Insights, Andrew Jago explains that volatility is not the concern of the long term investor, and gives you the tools you need to help get you through the ups and downs.

Volatility is not the long term investor’s concern

Volatility has been present in our markets before, but recently it seems like we have been in a period of increased turbulence. Chart 1 shows that we are currently experiencing a spike in volatility. But it also shows that periods of volatility are a regular occurrence in investment markets. The circles in the chart show just how often volatility occurs. Unfortunately, during such times, people get jumpy and try to predict where the market is going, selling off equities or becoming scared of investing in them.

Despite everything most market ‘experts’ say, investing is not a struggle, a battle, a game or a contest; it is a continuous process that lasts a lifetime. Whether you are winning or losing at any given moment is beside the point. The only

thing that matters is whether you prevail in the end – and the factors that may determine long term victory are the exact opposite of the ones that tend to create short term success.

Occasionally in the short run, investors who can’t let go – who track every market move – come out on top. But the longer they keep at it, the more likely these same people are to become ‘losers’. That’s because obsessing over the markets leads you to think you can foretell the financial future. You then make increasingly aggressive bets, and sooner or later, you may experience either heartburn or heartache. Fortunately, you can break this destructive pattern. The secret weapon is based around self control, and successful investors put this to work simply by adopting a virtuous approach to investing.

A virtuous approach to successful investing

Living with market volatility isn’t easy. The first thing you can do during a change in the market is talk with your financial adviser to look at your investment goals, time horizon, financial circumstances and risk tolerance in order to adapt your investment strategy accordingly. But the values that influence our daily lives also apply to investing. If you understand these basic principles, you’ll be a better equipped and more confident investor.

“investing is not a struggle, a battle, a game or a contest; it is a continuous process that lasts a lifetime”

1. COURAGE

Investing in shares is risky, but it’s a calculated risk

Think about the recent sharemarket gyrations as something like a dice, but with more than six sides. This ‘super dice’ has more positive sides than

QUICK OVERVIEW

How can I reduce the volatility of my portfolio?

Five principles for successful investing:

1: Courage

Investing in shares is risky, but it’s a calculated risk

2: Honesty

Be honest to yourself about how much you really know

3: Detachment

When invested in a balanced portfolio, it never hurts to read the headlines

4: Discipline

Don’t let emotion rule your investment strategy

5: Commitment

Keep your eye on the prize and ignore short term market events

negative sides. Each time market forces roll this dice, you take a chance on the outcome.

So January and February 2008 brought us negative results. As the dice is rolled for the next month, quarter or year, we take the risk that it could again land with a negative side facing up. But our chances for seeing a positive number next time are still greater than the chance of negatives. Historically, the sharemarket positive numbers have outweighed the negative numbers over long periods of time. There’s no reason to believe that they will not continue to do so in the future.

2. HONESTY

Be honest to yourself about how much you really know

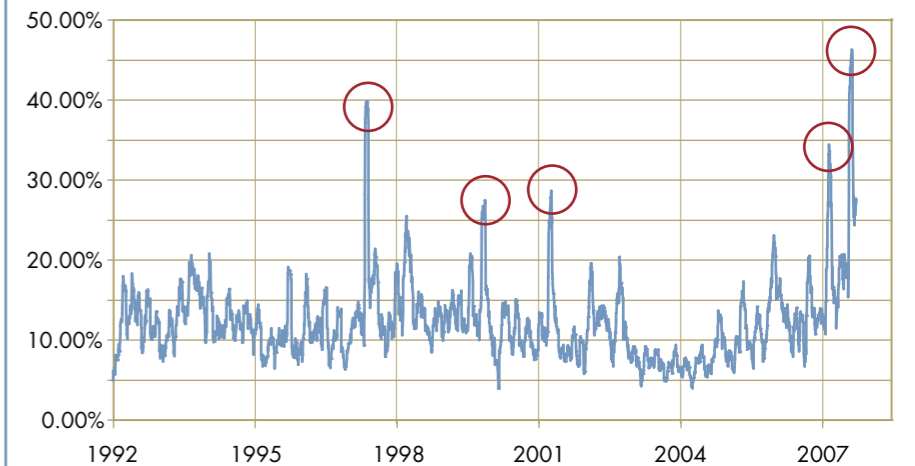
Be honest about – and constantly test – what you don’t know. Decades of research by the world’s leading psychologists has shown that overconfidence – thinking that you know more than you really do, or that you are more skilful than you actually are – is one of the most fundamental aspects of human nature. Back in 1999, when you could invest money into just about any tech stock and watch it triple in two days, one of the single most common phrases in the world of investing was “I am a genius.” In fact, anyone who made money trading shares without first studying the underlying companies had a lot of dumb luck, but not one iota of genius.

Successful investors accept not just the possibility – but the certainty – that they will be wrong much of the time. You need to protect yourself against being wrong in two dimensions: space (picking the wrong investments) and time (buying when you should sell, or vice versa). Overconfident investors are convinced they’re right in both dimensions – just when they are most likely to be wrong. Fortunately, powerful protection is available (see Figure 1). Putting all these protective tools to work at once will provide you with the closest thing to real peace of mind an investor can get.

3. DETACHMENT

Remaining neutral in your investment approach

Chart 1: Market Volatility as measured by standard deviation from May 1992 to March 2008



Source: 1 month rolling standard deviation of daily returns, ASX 300 Accumulation Index

There is certainly a tendency for the media to excite viewers and readers about short term fluctuations in the market – getting investors all hot and bothered about the fortunes of individual securities, countries and sectors. Even in the daily news, you don’t have to look far to find examples of financial shock therapy. The sharemarket plummets and the headlines warn of economic armageddon. Oil prices soar and another investment ‘expert’ touts the need to buy shares in energy companies. Investors are far better served to detach from the constant noise beat up from the media.

The long term ride to wealth accumulation or preservation, an honest confrontation of risk and reward – implemented via a carefully selected asset allocation – is the only way to prepare for unpredictable volatility. It

is important to accept that the value of your investments will rise and fall in the short term based on market behaviour which is out of your control. And that’s okay if what matters is the size of your account balance on retirement day, not tomorrow or next week. It also makes reading about plummeting individual shares and spectacular booms much less painful.

“successful investors accept not just the possibility – but the certainty – that they will be wrong much of the time”

4. DISCIPLINE

Don’t let emotion rule your investment strategy

Often during a strong market upswing

Figure 2

	Amount Invested (1990)	Type of Fund Invested In	% Return (2007)	\$ Return (2007)
The ‘Chaser’ or ‘Bailer’	\$100,000	Chases top performing asset sector (switching once a year on 1 Jan)	8.9%	\$427,452
The ‘Sticker’	\$100,000	Diversified Portfolio (consisting of: 32% Aus Shares, 15% International Shares, 15% International Shares Hgd, 8% Property, 15% Aus Bonds, 10% Int Bonds, 5% Cash)	10.3%	\$587,526

(rising equity prices), investors will instinctively buy 'so as not to be left out of the gains'. Conversely, during a strong downswing (falling equity prices), investors will feel compelled to sell 'so as not to be left wearing the losses'

The most successful investors will be those who stay in control while others may panic. It's easy to let short term market movements affect and even dictate your investment decisions. Which is why it's important to understand the role that investor sentiment and emotion plays in the cyclical nature of equity markets.

5. COMMITMENT

Get in – and stay in

Figure 2 compares two investor types: the 'Sticker' and the 'Bailer'. When both invested \$100,000 over a 17 year period, the Sticker who committed

to a diversified portfolio clearly benefits from a higher return.

Now consider a 'Bailer' or 'Chaser' – a hypothetical investor – also starting with \$100,000 in 1990 – who chases the top performing asset sector each year and switches on 1 January every year.

During the same time period, this investor would have changed their asset allocation 17 times. By the end of 2007, their average annual return would have been 8.4% and investment worth \$427,452. As you can see in the table, our 'Sticker' fared much better.

The tax implications of selling your shares or 'Bailing', should also be considered, as they may offset any positive impact of selling. It is worth investigating how much tax you would have to pay before you decide to sell.

Remember that your investment strategy should be selected based on your risk tolerance, age, how long you plan to work, financial circumstances, retirement goals, and attitudes about investing. And it's important that you stay committed to your strategy and don't alter it unless your life changes.

THE POINT

These simple principles will not necessarily make you wealthy. One's approach to investing can be handled with the same grace we strive for in other aspects of life. So run through these five principles next time the market nosedives or you're tempted to act on a 'hot tip' from a friend or co-worker. As Socrates said, "Virtue does not come from wealth, but wealth, and every other good thing which men have, comes from virtue."

Figure 1: Investment Power Tools

DIVERSITY

Regardless of market conditions, an investor's best defence is always a well-planned allocation strategy and well-diversified portfolio. Diversify your investments and nominate a percentage to put into various market sectors – for example, investing 60% in Australian and international shares, 20% in bonds, 10% in property and 10% in cash. Remembering that the gain or loss on any one individual investment represents just a portion of your portfolio.

STOP BETTING AND START WINNING

If you're really sure a security, fund or industry sector could return a significant gain, invest only a small allocation of your total assets. By remaining disciplined and sticking to your original strategy, you'll be rewarded if your instinct is correct, but won't suffer a major loss if you happen to be wrong.

INVEST REGULARLY

Dollar cost averaging is systematic investing; that is, investing a small amount of money on a regular basis. A trick used by experienced investors, dollar cost averaging means that when market prices are falling, you automatically buy more units in the fund with each subsequent investment, and vice versa. Because of this, the average unit price of your investment will be under the average market price, therefore providing an efficient investment strategy.

REBALANCE

Finally, once or twice a year, adjust your assets so they match the target percentages you picked earlier. That will force you to sell a bit of whatever has gone up and buy a bit of whatever has gone down – reversing the tragic buy-high, sell-low pattern that plagues most investors.



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