

Panel discussion: The Blue Chip Story: Hickman v Turner & Waverley GE Custodians v Bartle

Speakers:

- **Liam Mason**, Head of Legal, Financial Markets Authority, Wellington
- **John-Paul Rice**, Partner, Russell McVeagh, Auckland

Panel Chair:

- **Lloyd Kavanagh**, Partner Minter Ellison Rudd Watts, Auckland



Blue Chip Business Model

- Blue Chip secured sites for apartment buildings, arranging finance and construction with developers
- Investors purchased apartments “off the plans” – deposits providing initial funding
- Depending on the product:
 - Leases arranged & guaranteed by Blue Chip;
 - Blue Chip arranging a second purchaser to take out the investor before settlement.
- Typically Blue Chip managed the whole relationship for the investor



Blue Chip's Products

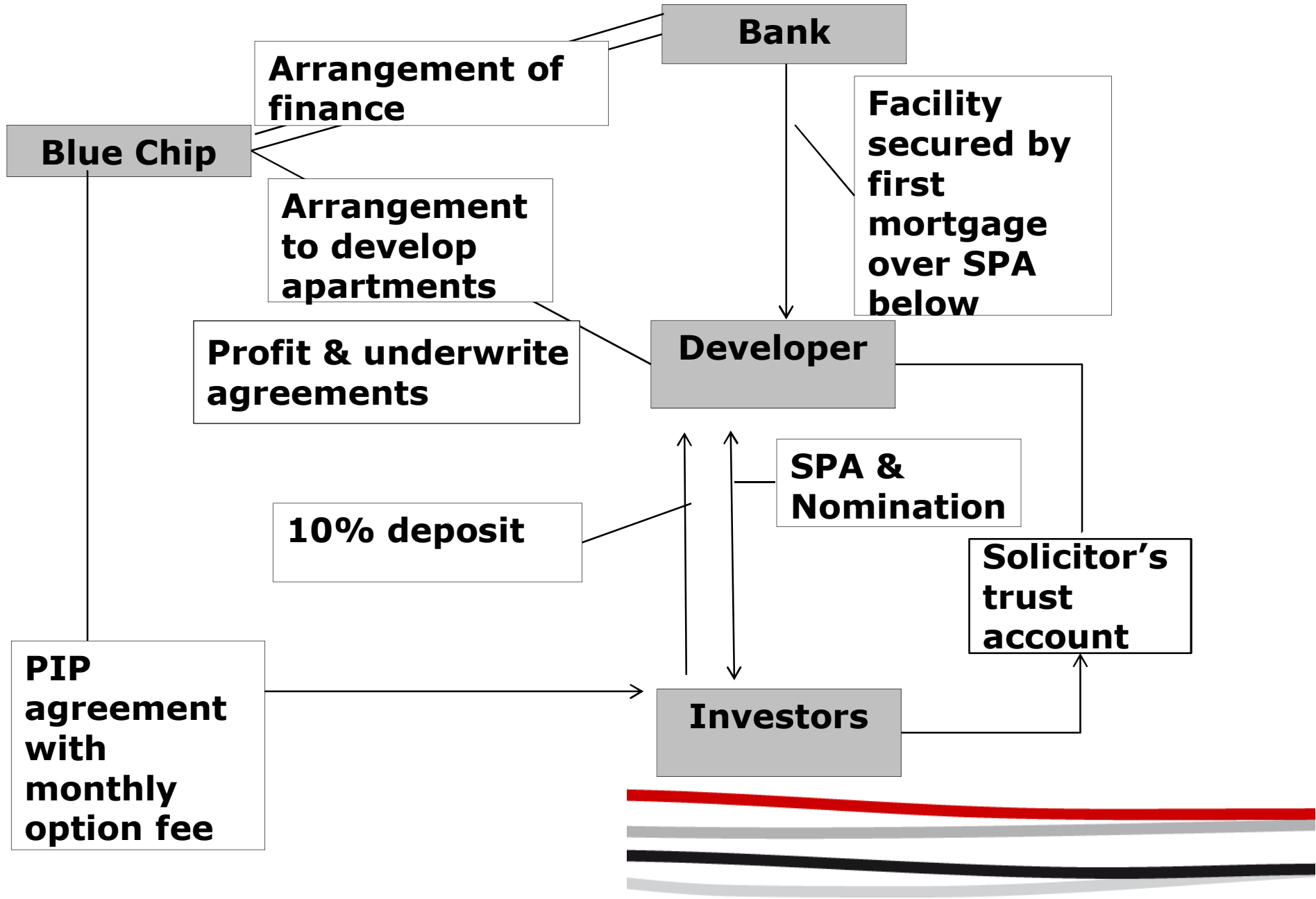
- Mainstream Agreement
- Joint Venture Agreement
- Premium Income Product
- Put and Call Agreement

Blue Chip claimed:

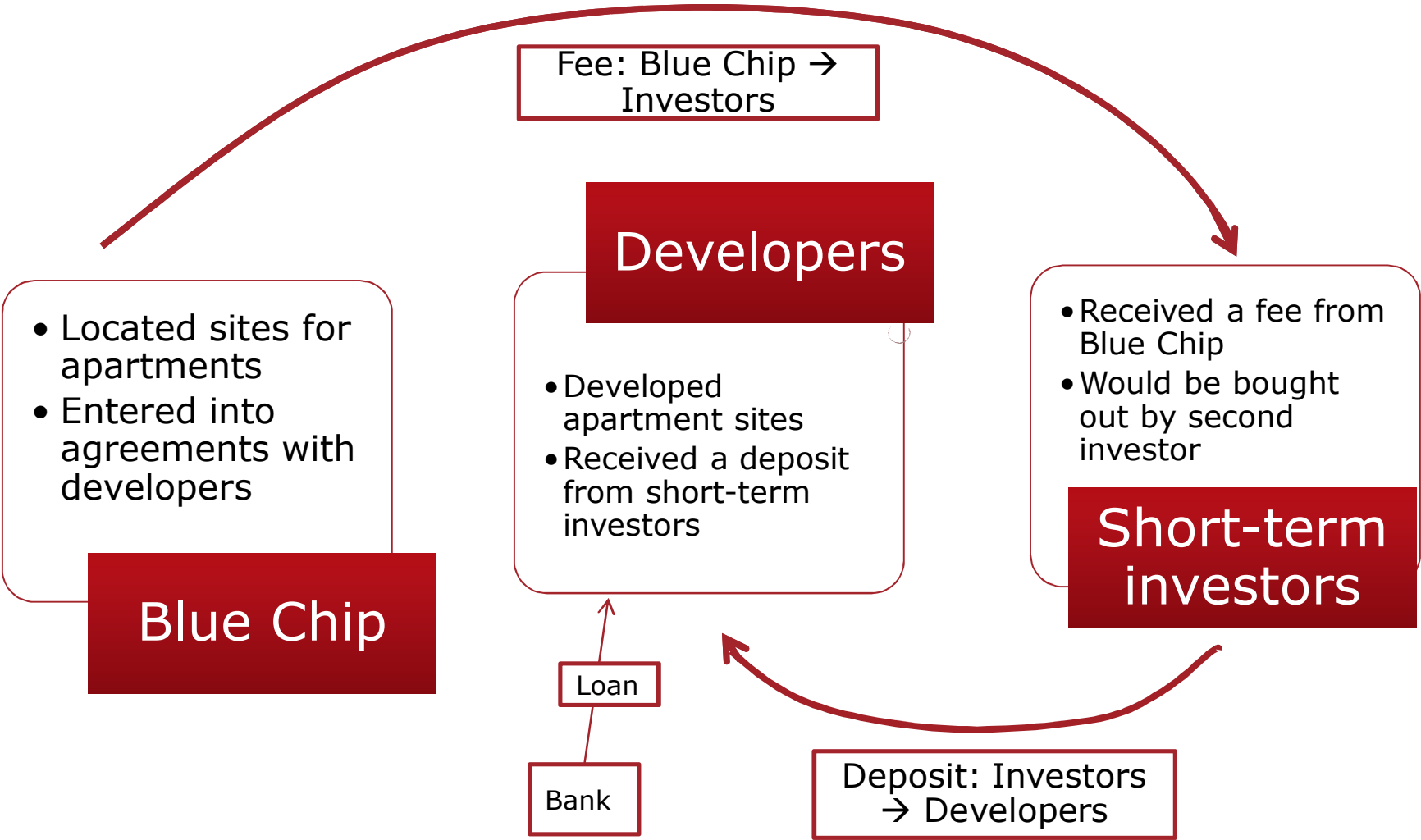
“products deliver positive cash flow on a weekly basis. ... underpinned by long-term fixed leases for clients, supported by annual tax benefits and the potential for attractive capital gains if the property is sold.”



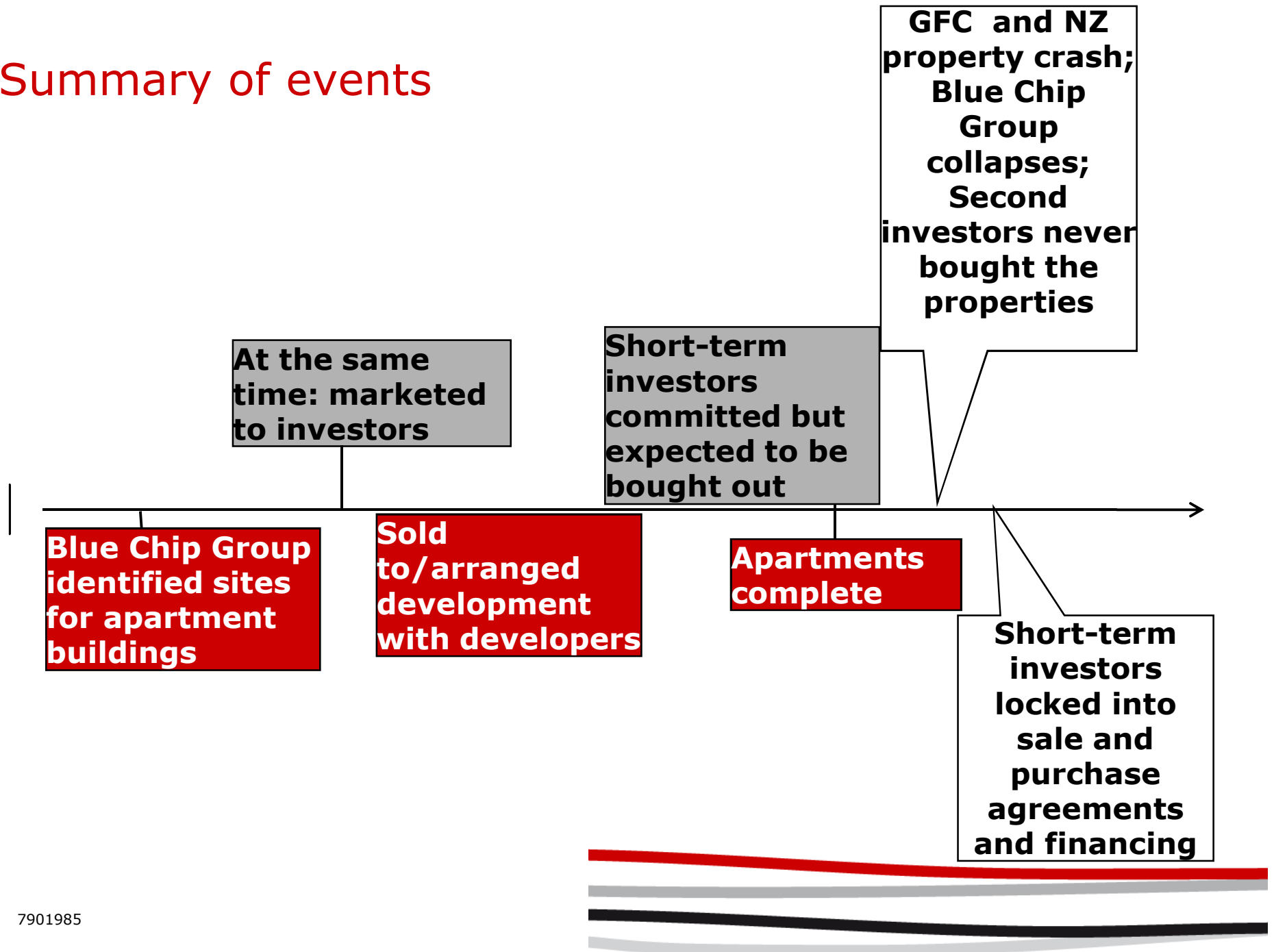
Premium Income Product



Blue Chip: Cashflow Overview



Summary of events



The Blue Chip Story: Hickman v Turner & Waverley - Main Issues

- Were Blue Chip's investment products (JVA, PIP and PAC) **securities** for the purposes of the Securities Act?
 - If they were, what are the consequences, particularly for the associated SPAs –ie are they securities?
- Were developers "issuers" of those securities?
- Does the s5(1)(b) exemption in relation to land interests apply?

GE Custodians v Bartle: Main Issues

- Was the loan agreement between the Bartles and GE Custodians "oppressive" under the CCCFA?
- Should the lender have been required to look behind the Bartles' certificates stating they could meet their repayment obligations?



Result

