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Breakfast Of Champions

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Skadden's Gregory Miao

A Chinese bank's initial public offering becomes a marathon.

LIKE OLYMPIC JUDGES, a panel of 12 business executives scribbled on scorecards as Gregory Miao, Jon Christianson, and their partners at Skadden, Arps, Slate, Meagher & Flom made their pitch to take China Construction Bank public. The Skadden team landed its points like champion skaters completing triple axles, beating five other U.S. firms in the competition for the work.

Skadden had sent its star lineup to the competition in Beijing: Miao and Christianson—Skadden's top transactional partners in Asia—as well as the leaders of its firmwide corporate finance and bank regulatory practices. Miao and Christianson had already headed a string of major transactions in China, most notably the privatization of oil giant Sinopec Corp. in 2000.



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Hours Miao spent in a conference call, going over a Hong Kong regulator's comments.

In fact, the firm was nearly a victim of its own success in China. The same week that it pitched CCB, Skadden had successfully auditioned to represent another firm, China Netcom, in its IPO. But CCB officials wanted to make sure they had Skadden's full attention. At CCB's request, Miao wrote a letter pledging to take the daily lead in the bank's transaction.

The third-largest state-owned bank in China, CCB raised \$9.2 billion when it launched on the Hong Kong stock exchange in November, making it the world's biggest IPO in 2005 and the largest since 2001. This was a marathon, not a sprint. The offering, which Miao calls the most complex of his career, took 20 months to complete, in part because the bank had to be restructured from a state-owned enterprise to a public entity. CCB was the first of China's big-four state-owned banks to be restructured and offered to interna-

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tional investors, and neither the bank nor the government knew how to meet international investors' expectations and requirements. (In fact, CCB's preparation was so lengthy that another state-owned bank, the Bank of Communications Co., Ltd., actually beat CCB to the markets by five months, even though it began the process later.)

As a state-owned entity, CCB had racked up about \$37 billion in bad loans. In preparing for the offering, one of the bank's most important tasks was showing investors that its risk-management system had reduced CCB's nonperforming loan ratio—the percentage of its total loans that have gone bad. CCB had gone through several large disposals and write-offs of bad loans, reducing its nonperforming loan ratio from 16.9 percent in 2002 to 3.9 percent in 2004. But to satisfy potential investors, CCB had to show that the drop was due not just to the disposals and write-offs, but also to a risk-management system CCB had adopted in 1998. Miao and his team did not have the data to analyze CCB's loan portfolio according to industry segments or types of customers, as is the typical practice. So they came up with a new way to evaluate the data by running two nonperforming loan ratio analyses—one for customers the bank had prior to 2001, and another for customers it acquired after 2001.

While lawyers toiled over the details, there was a lot of drama as well. Midway through work on the IPO, the Chinese government launched an investigation of charges that CCB chairman Zhang Enzhao had taken bribes. The allegations arose in a suit filed against Enzhao by Grace and Digital Information Technology, a California software firm. CCB removed Enzhao from his position. While the investigation sparked a flurry of questions from investors on the road show and from the Hong Kong stock exchange, it didn't derail the deal.

A couple of months before the IPO launched, the lawyers



Christianson (left) and Miao

got another surprise, when CCB removed Citigroup Inc. as one of its lead underwriters. (Credit Suisse First Boston LLC was eventually brought on as a replacement.) Miao declined to discuss why Citigroup was yanked from the lineup, but acknowledges that he and his team had to scramble to get CSFB up to speed on the offering.

Miao, 51, and Christianson, 47, have worked on virtually every Chinese transaction Skadden has handled in the last 15 years. In 1993 they represented underwriters Merrill Lynch & Co., Inc., and Peregrine Capital Limited in the IPO of Shanghai Petrochemical Company, the first Chinese company to be listed simultaneously on the New York and Hong Kong stock exchanges. Miao and Christianson also represented the issuers in IPOs for Huaneng Power International Inc. and oil and gas giant Cnooc Limited. In addition, Miao represented the underwriters in China Life Insurance Company Limited's \$3.5 billion IPO, Kodak Limited in its \$1.6 billion acquisition of most of China's state-owned photographic industry, and the independent nonexecutive directors in Cnooc's unsuccessful bid for Unocal Corporation.

Miao grew up in Shanghai and received a bachelor's degree in law there before going to New York University School of Law. He joined Skadden's New York office in 1988 and relocated to the firm's Hong Kong office six years later. Christianson moved to Skadden's Beijing office in 1991, just as the country was beginning to enter the international capital markets. Fluent in Mandarin, he had previously lived in China while working for the Mormon Church. While Miao focuses on restructuring details and works closely with clients, Christianson handles disclosure issues and negotiates with the underwriters. Matthew Mallow, the head of Skadden's corporate finance group, says they complement each other. "Jon is extremely able as a technical and thorough securities lawyer [while] Greg has a broader base as a lawyer and a real understanding of the cultural influences and issues that relate to doing deals in China," Mallow says.

On the CCB deal, Miao spent much of his time educating bank managers about securities law. "Some of the executives

initially viewed the prospectus less as a disclosure document but primarily as a marketing document to raise the bank's profile in Hong Kong and the United States," Miao says. "It was an extremely painful process explaining to executives why disclosures have to be made in a certain way to meet the strict requirements under the securities laws as well as to keep in line with market practice." One point of contention was how to describe China's regulatory regime in the prospectus, particularly in the section on risk factors. CCB wanted to minimize the importance of the regulations to distance itself from the government, but Miao argued that the directors were obligated to disclose all material facts, and could be sued and lose credibility if they didn't.

Initially, CCB planned to launch on both the New York and Hong Kong stock exchanges, but it ultimately decided to list only in Hong Kong. That's a recent trend among major Chinese corporations—the four multibillion-dollar IPOs that issued ahead of CCB all listed exclusively in Hong Kong. Miao says companies are skirting New York to avoid both potential exposure to shareholder class actions and the regulatory risks and costs of complying with the Sarbanes-Oxley Act.

Miao and his team have lived up to the high scores they won in the competition to bring CCB public. Three months after its debut, the bank's shares were trading more than 20 percent above the opening price. And Miao has since landed leading roles in a half-dozen other M&A deals, IPOs, and other equities transactions, including representing China National Bluestar Corp. in its recent acquisition of Drakker Holdings for an undisclosed amount. Given China's current deals boom, there's likely no end in sight to the legal beauty contests.

—BRENDA SANDBURG

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