



ACC San Francisco – Deal or No Deal

**Avoiding Post-Closing
Integration Road Blocks:
Failing to Plan or
Planning to Fail?**

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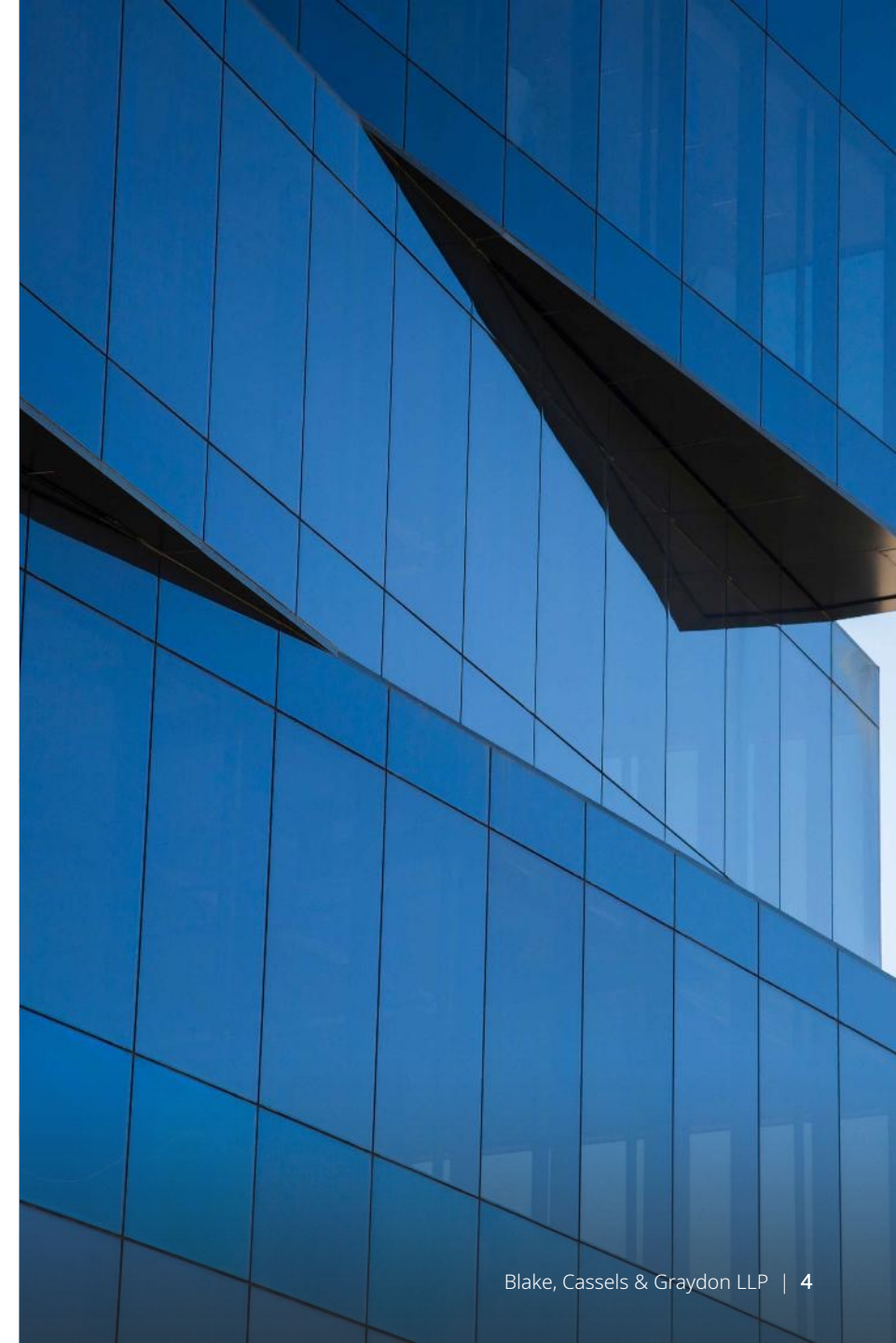
About Blakes

- Blakes has one of the largest and most active mergers and acquisitions practices in Canada
- In the past 10 years, Blakes has been involved in more than 1,350 global public and private M&A transactions, with an aggregate dollar value of US \$1.4 trillion
Point number three
- Band 1, Corporate/M&A, Nationwide Canada, Chambers Canada: Canada's Leading Lawyers for Business 2022

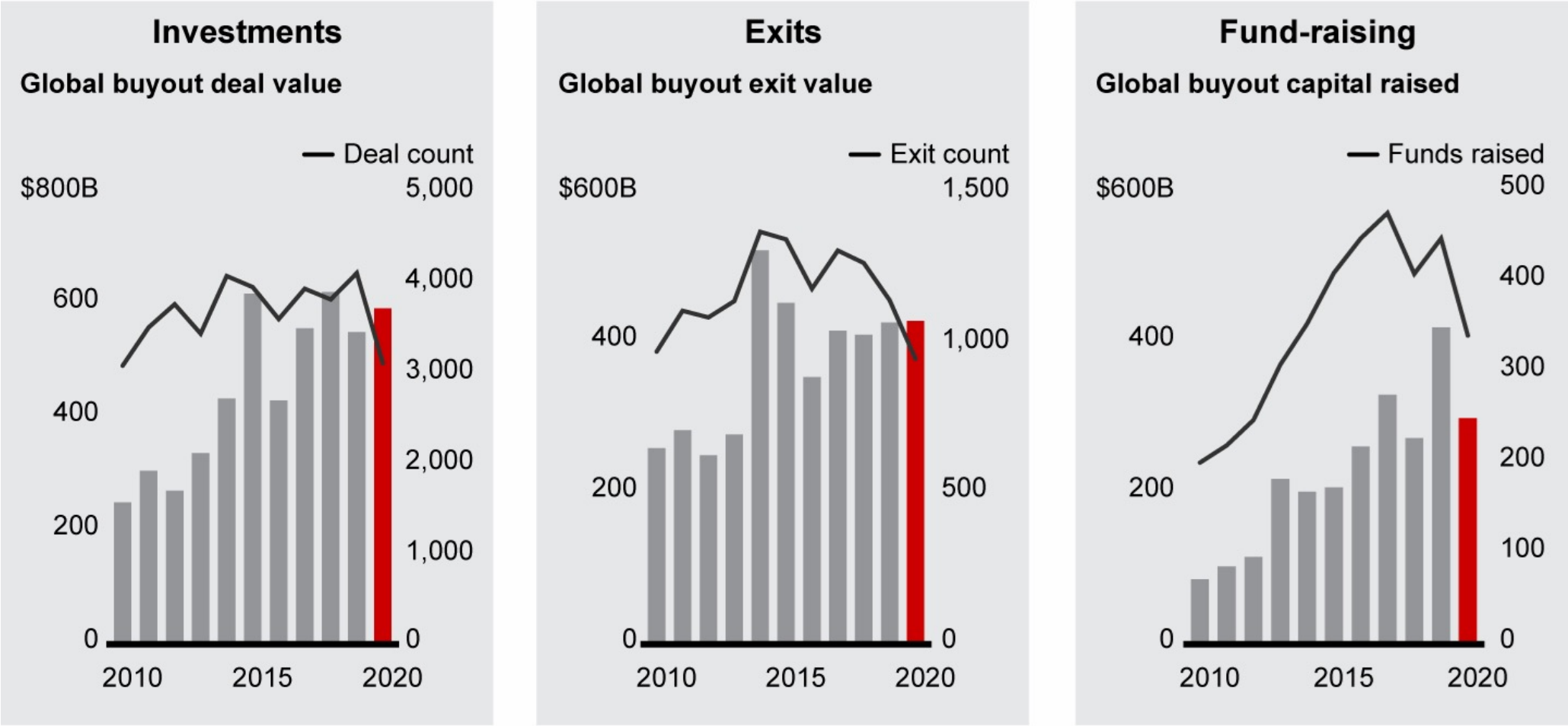


Agenda

1. Integration Overview
2. Setting the Stage
3. Plan for Day One
4. Integration Topics:
 - a) Compliance, Reporting and Disclosure Requirements
 - b) Legal Entity Rationalization
 - c) Employees
 - d) Competition, Anti-Trust & Foreign Investment
 - e) Intellectual Property
 - f) Systems and Processes



It's been a Wild Ride – an M&A Frenzy...



Notes: Investments—includes add-ons; excludes loan-to-own transactions and acquisitions of bankrupt assets; based on announcement date; includes announced deals that are completed or pending, with data subject to change; Exits—bankruptcies excluded; IPO value represents offer amount and not market value of company; Fund-raising—includes closed funds only and represents the year in which funds held their final close; buyout includes buyout, balanced, coinvestment and coinvestment multimanager funds
Sources: Dealogic; Preqin; Bain analysis

... but Successful Integration Remains Elusive

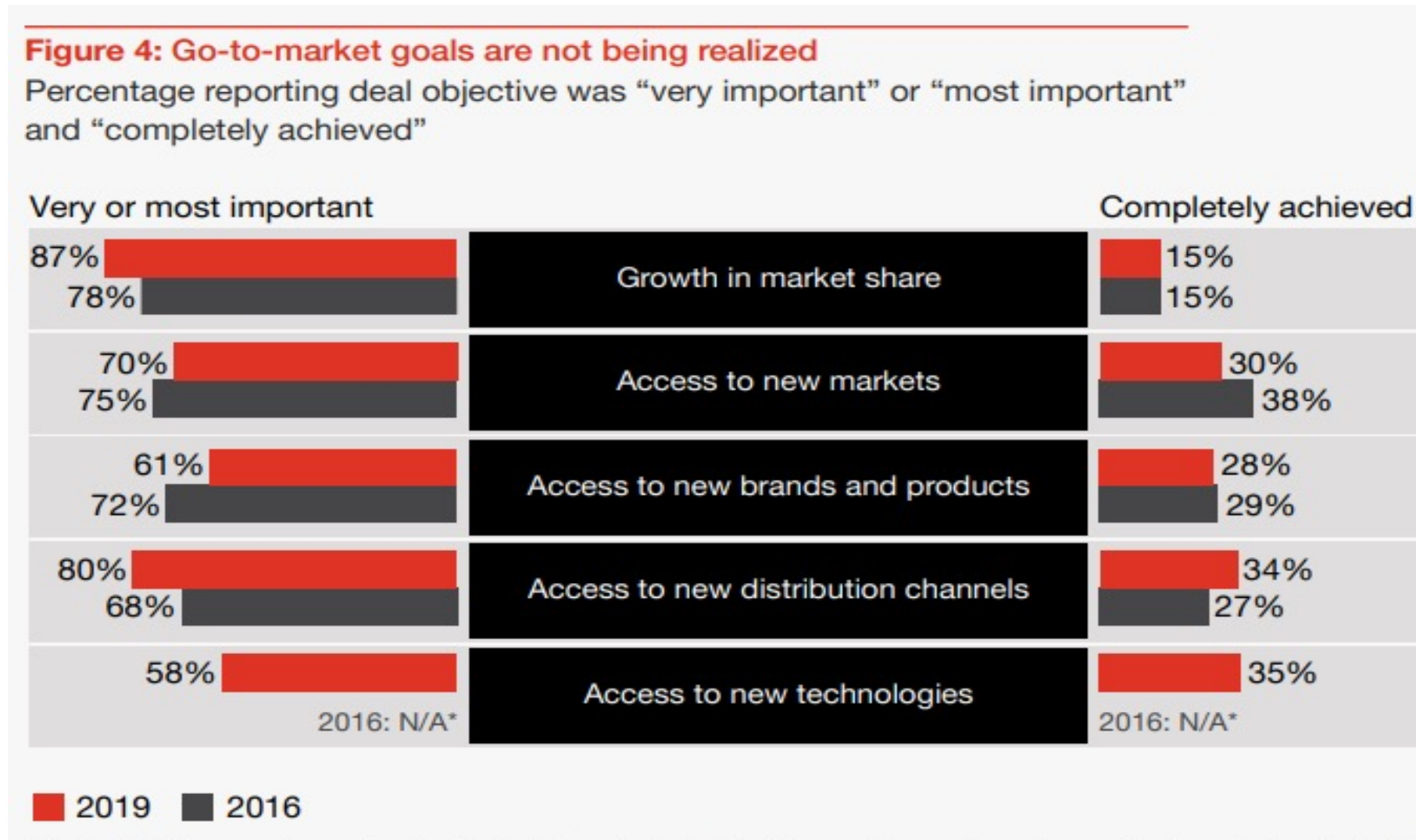


Figure 2. PwC, “Evolving with Agility: PwC’s 2020 M&A Integration Survey” (2020) online: PwC <<https://www.pwc.com/us/en/services/deals/library/ma-integration-survey.html>>.

It's Not for Lack of Effort...

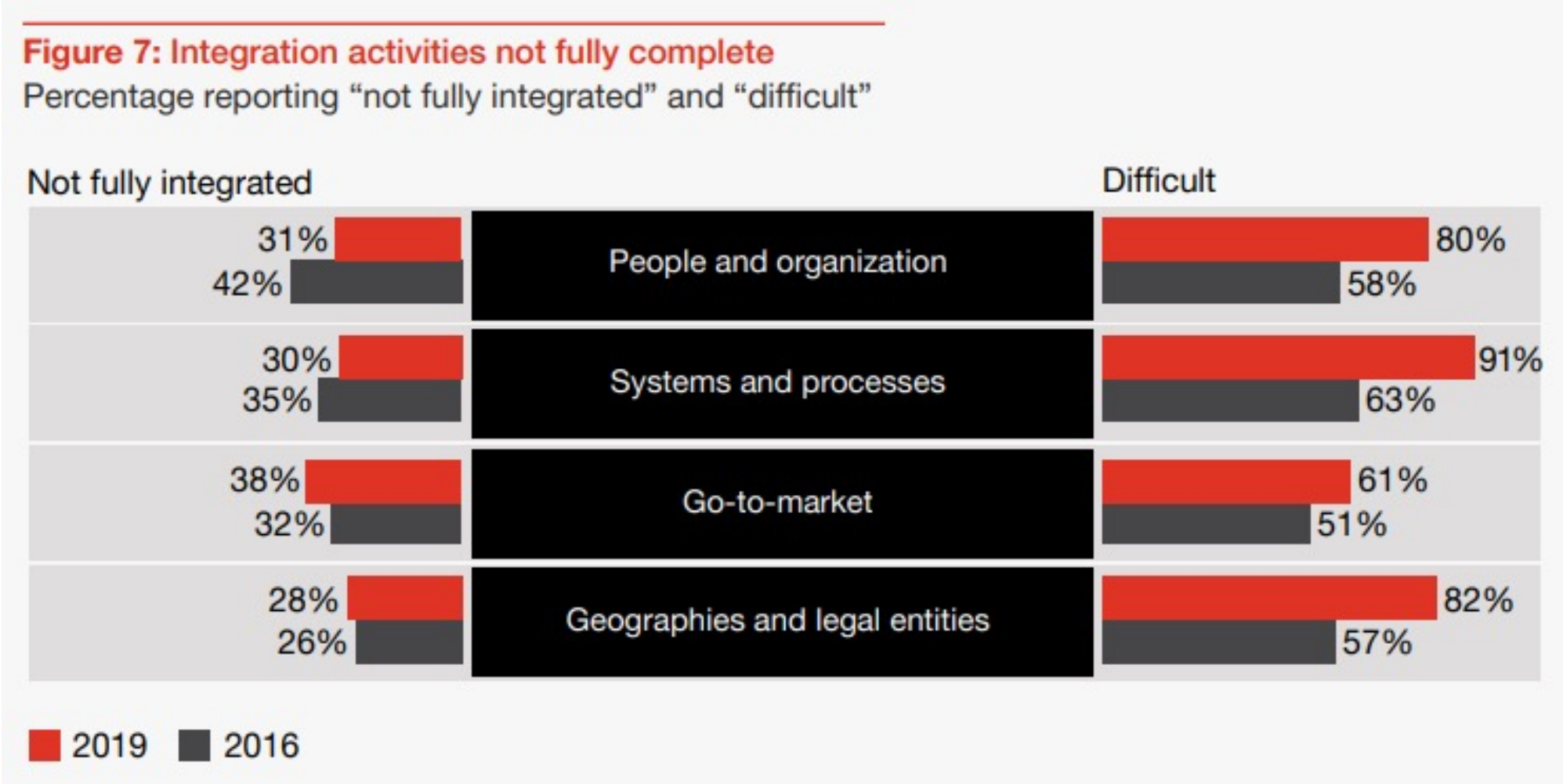
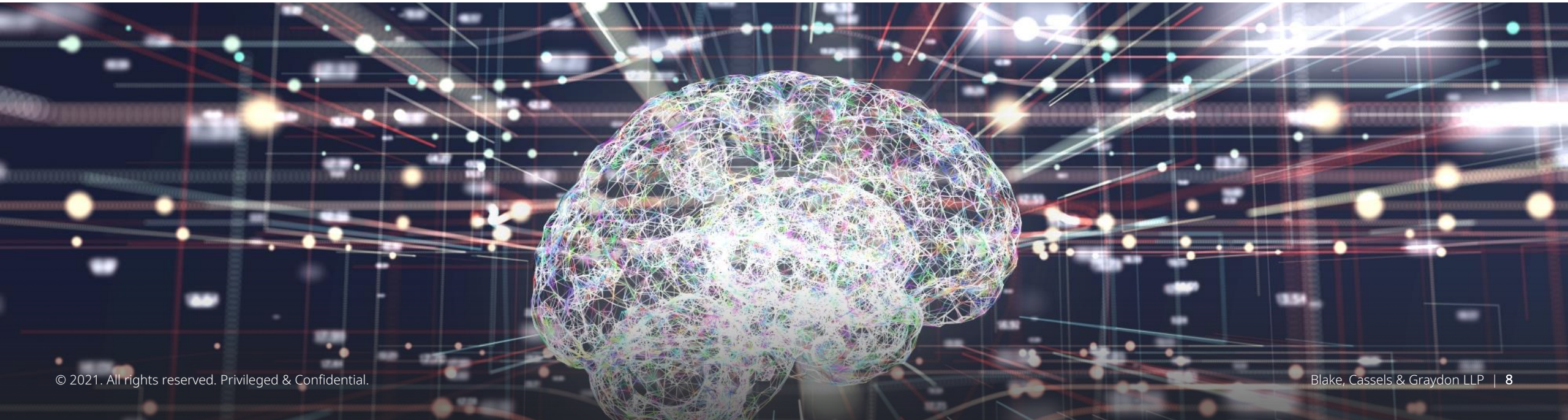


Figure 3. PwC, “Evolving with Agility: PwC’s 2020 M&A Integration Survey” (2020) online: PwC <<https://www.pwc.com/us/en/services/deals/library/ma-integration-survey.html>>.

Integration Nerve Center

- Integration planning is a collaborative, integrated exercise with buy-in required from all levels
- Stress on the legal function in post-closing integration is high because legal skills, institutional knowledge and constant risk assessments are required for a successful integration model





Setting the Stage

- Integration must be a Standalone Workstream
- With Clear Objectives
- Rigorously Managed
- Supported by Senior Leadership
- Identify, Plan and Prioritize Tasks (work plans, step lists, accountability matrices)

Plan for Day One

- Bring forward Due Diligence
- Leverage pre-closing data points
- Identify
 - Jurisdictions
 - Which entities are operating and how do they “go to market”
 - Where are tangible assets located
 - Transfer pricing policies
 - Employee census (collective bargaining status)



Integration Topics

Key areas where legal teams should focus integration efforts

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Compliance, Reporting and Disclosure Requirements

- Develop a compliance plan
- Determine public disclosure obligations
- Identify financial reporting systems
- Integrate continuous disclosure procedures and strategies

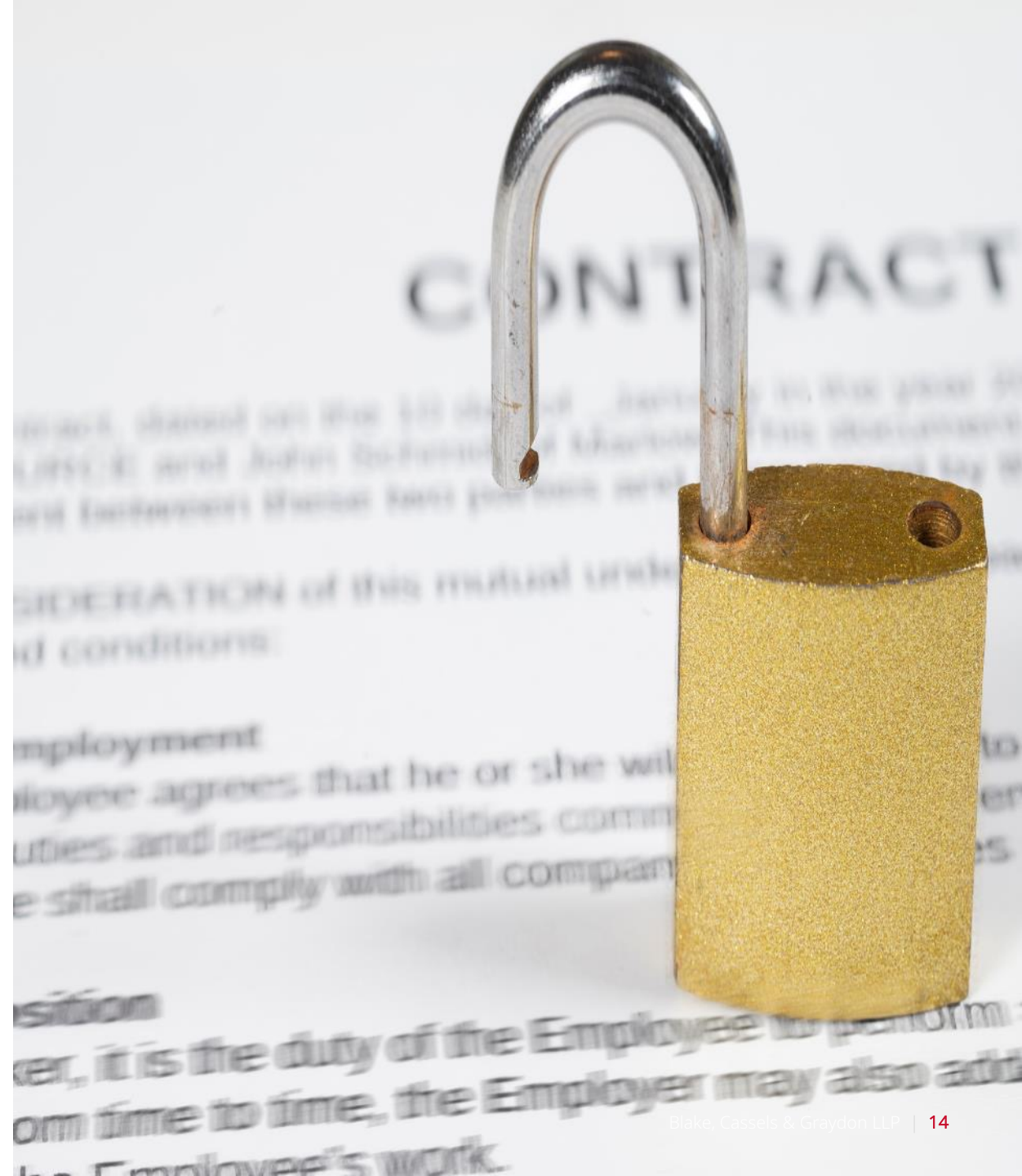


Legal Entity Rationalization

- Execution speed = complex structures
- Ongoing corporate governance, legal, accounting, audit, tax, regulatory reporting and compliance requirements
- Increased burden on corporate counsel
- Increased cost
- Challenge legacy entities

Employees

- Terms and conditions of employment
 - Employment agreements
 - Collective bargaining agreements
 - Compensation and benefit structures
- Employees on leave
- Occupational health and safety
- Workers' compensation
- Vacation
- Pay equity
- Severance obligations



A person in a dark suit is seen from behind, walking up a long, dark staircase. The staircase is made of dark blue or black steps. The person is walking towards a bright, open horizon at the top of the stairs. The walls on either side of the stairs are light-colored and have a triangular shape, creating a sense of depth and perspective. The sky is a light blue color.

Competition, Anti-Trust & Foreign Investment

- Integration vs “Integration planning”
 - Where merger reviews are ongoing
 - Strategic vs financial purchasers
 - Jurisdictions actively enforcing prohibitions on “gun jumping” conduct
- Use of “clean teams” to reduce risk
- Possibility of post-closing restrictions on integration
 - Hold separate / preservation agreements
 - Information ring-fencing
 - Pending divestitures
- Post-closing – harmonizing competition compliance culture



Intellectual Property

- Acquired IP Framework Defines Roadmap:
 - Purchase Agreement:
 - Disclosure schedules and Representations frame acquired rights
 - Rep and warranty insurance limitations
- Prune and Grow Portfolio
- Becoming an Infringement Target
- Updating Registrations
- Trademark Continuity
- Intercompany Intellectual Property Licenses
- Strategy for Intellectual Property Agreements

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