ASIC
Australian Securities & Investments Commission

Equity market cleanliness snapshot report

REPORT 786 | JULY 2024

ABOUT THIS REPORT

This report highlights some of the key findings from our review of Australian listed equity market cleanliness (Report 787) and looks at our enforcement track record in detecting and prosecuting insider trading matters.

ABOUT ASIC REGULATORY DOCUMENTS

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

DISCLAIMER

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations. Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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Executive summary

This snapshot report summarises and provides a broader context for the findings in Report 787 *Review of Australian equity market cleanliness: 1 November 2018 to 30 April 2024* (REP 787).

It also sets out our enforcement track record in detecting and prosecuting insider trading matters.

ASIC reviewed the cleanliness of Australia's listed equity markets from 1 November 2018 to 30 April 2024 (review period). **We found that Australia's equity markets continue to be clean and operate with a high degree of integrity, and that we continue to be one of the cleanest markets in the world compared to our international peers.** During the review period, we observed two periods of deterioration—in 2020–2021 during the COVID-19 pandemic, which caused market disruption and extreme price volatility, and in late 2023 when we observed an uptick in anomalous (or abnormal) trading.

Market cleanliness is a priority for ASIC

Market cleanliness supports the integrity of Australia's equity market and helps to ensure a fair, strong and efficient financial system for all Australians. A well-functioning financial system is critical to an efficient economy. It helps Australian businesses to raise capital and manage risk, and gives investors confidence to participate. It also assists with price formation, which benefits investors and businesses in public and private markets.

We take a range of regulatory interventions to maintain the integrity of the markets, including in response to deterioration. In the deterioration periods observed in the report, the deterioration was temporary and market cleanliness subsequently improved.

Australian listed equity markets are consistently among the cleanest in the world

International research has found that Australian listed equity markets operate with a high level of integrity.

Our analysis also found an overall improving trend in market cleanliness in Australia over the past decade.

Industry participants need to have effective processes and policies to handle confidential information

All entities—including listed companies, investors, bankers, brokers and other advisers—have a key role to play to support market cleanliness. Inside information needs to be handled with care, with limits around who has access to it. This needs to be supported by robust policies and procedures, and action should a leak occur. In addition, all of these players should be using their role in the market and their resources to pursue fair and appropriate outcomes for all participants in equity markets.

Expanding our market cleanliness work

We will continue to focus on market surveillance and take enforcement action where we see misconduct. This includes investing in data and technology to combat all forms of market misconduct. We are actively monitoring corporate transactions and changes in the structure of capital markets, including the growth in debt and private markets. We will expand our market cleanliness work to capture these markets and other products in the coming year.

1,056

material, price-sensitive announcements (MPSA) in 2023

55%

less price run-ups ahead of M&A than global peers (2009-2022)

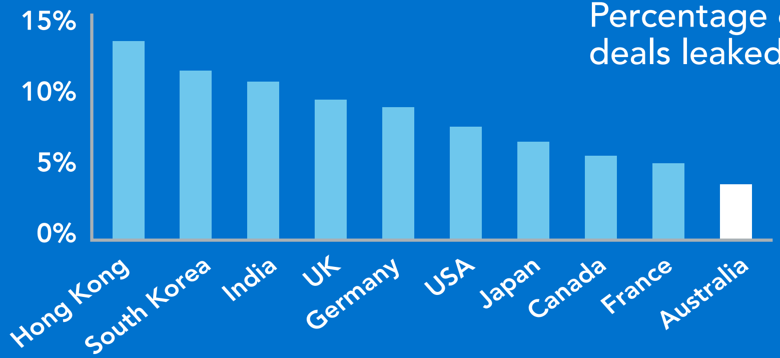
0.56%

of accounts trading ahead of MPSA were anomalous

4.75%

of total volume trading ahead of MPSA was anomalous

Percentage of M&A deals leaked by country*



M&A

had more anomalous accounts trading (1.1% of accounts) than other MPSA (0.53% of accounts)

Telcos

was the cleanest sector (0.43% of accounts trading ahead of MPSA were anomalous)

Real estate

was the least clean sector (0.66% of accounts trading ahead of MPSA were anomalous)

Larger companies

had more anomalous accounts trading ahead of MPSA (0.68% of accounts) than smaller firms (0.42% of accounts), by market capitalisation quintile

*RESEARCH CONDUCTED BY SS&C INTRALINKS AND THE M&A RESEARCH CENTRE AT CITY, UNIVERSITY OF LONDON.

How market cleanliness is measured

A clean equity market that is fair, orderly and transparent is critical to an efficient economy.

It helps Australian businesses to raise capital and manage risk and gives investors confidence to participate.

ASIC's oversight of real-time markets provides us with access to account-level data on all trades, which enables us to undertake a granular assessment of trading ahead of all company announcements—not just mergers and acquisitions (M&A)—by individual accounts.

For this report, our primary measure of market cleanliness is the number of anomalous accounts as a percentage of the total number of accounts that traded a particular security prior to a material, price-sensitive announcement (MPSA): see Figure 1. A secondary measure looks at the volume of anomalous trading as a percentage of total trading volume.

Anomalous accounts are those that:

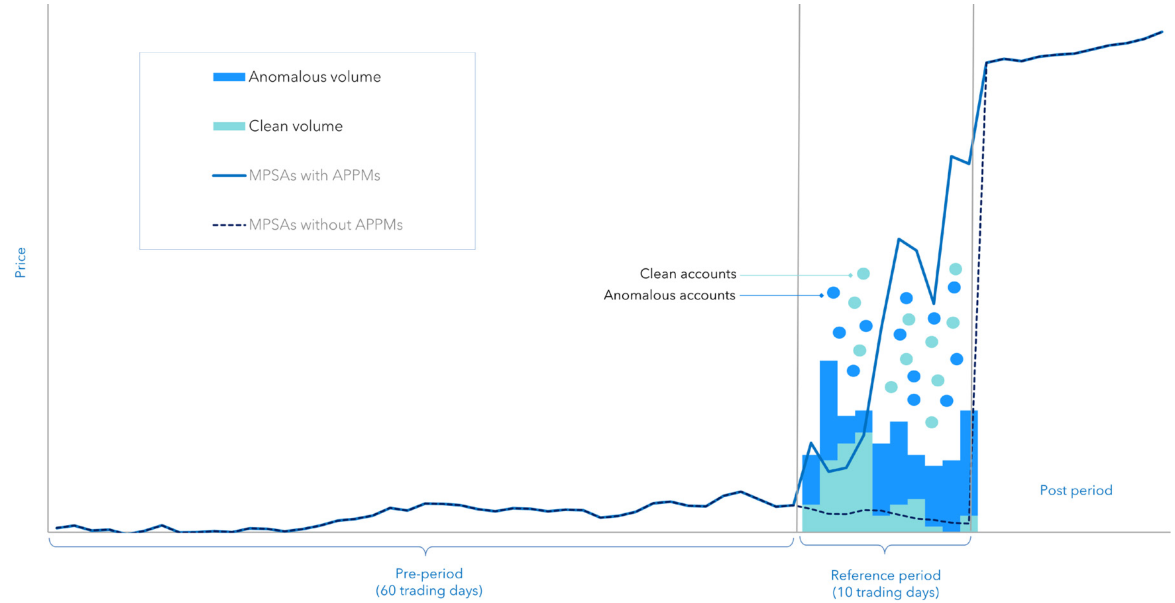
- traded in a profitable manner during a 10 trading day period ahead of MPSAs, and
- displayed unusual trading patterns compared with how the account and/or the rest of the market had traded in the prior 60 trading day period.

We identify anomalous accounts by applying our surveillance methodology with enhanced regulatory data and our market surveillance system.

Measure of market cleanliness

$$= \frac{\textit{number of anomalous accounts or volume}}{\textit{total number of accounts or volume}}$$

Figure 1: Illustration of account-based market cleanliness methodology



Note: Figure 1 is explained in the paragraph above (accessible version).

Key findings on equity market cleanliness

We analysed equity market cleanliness over the review period, building on our previous review in Report 623 *Review of Australian equity market cleanliness: 1 November 2015 to 31 October 2018* (REP 623).

Australia's listed equity markets continue to operate with a high level of integrity, with the percentage of anomalous trading over the review period remaining low.

- On average, we identified 0.56% anomalous accounts and 4.75% anomalous volume that traded ahead of MPSAs. This indicates that, on average, when anomalous accounts traded they traded in higher volumes than other accounts on these announcements.
- M&A announcements were less clean than non-M&A announcements and positive announcements were less clean than negative announcements.

Anomalous trading by both accounts and volume marginally improved in the period (see trendline in Figure 2). However, there were two periods where market cleanliness deteriorated. These were temporary and driven by the market environment at the time.

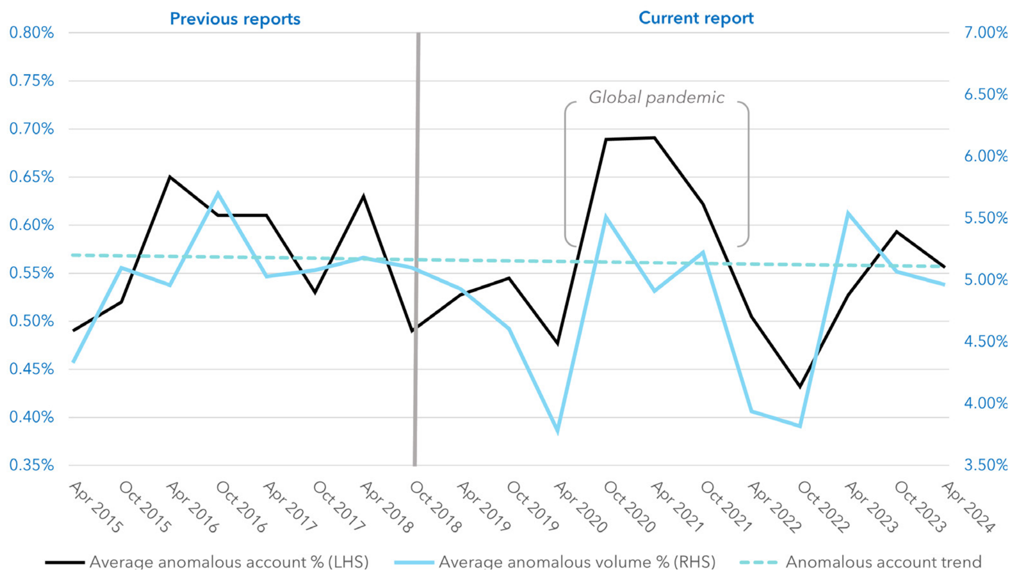
In 2020–2021 during the COVID-19 pandemic, we observed:

- extreme price volatility and share price movements associated with a significant increase in trading volumes
- rapid growth in retail investor participation, 'meme' stock trading and social media commentary about investing. This may have contributed to an increase in market misconduct, including insider trading and 'pump and dump' activity, and
- trading by many new or reactivated trading accounts, which may be viewed as anomalous if their first trade occurred shortly before an MPSA.

ASIC took a number of actions to support market integrity during the pandemic and Australia continued to have a strong secondary capital raising market over this period. ASX market statistics reported that $66 billion of secondary capital was raised in 2020 and $60 billion in 2021.

In 2023, the deterioration in market cleanliness may have been a function of increased corporate transaction activity and an increase in media reports ahead of some MPSAs. In response, we took a range of actions to support market integrity. In both periods the deterioration in market cleanliness was temporary, and ASIC continues to act to promote the downward trend.

Figure 2: Market cleanliness over time by account activity and volume



Note: See Table 2 for the data shown in this figure (accessible version).

International comparisons

Another measure of market cleanliness is the percentage of M&A deal announcements that were preceded by abnormal price movements.

Based on research by SS&C Intralinks and the M&A Research Centre at City, University of London, Australian listed equity markets perform consistently well and are one of the cleanest when compared to international peers.

Table 1 shows Intralinks' M&A leak comparisons by country from 2009–2022, based on pre-announcement price increases. Over an extended period, Australia ranks favourably compared to nine international peers, with the least pre-announcement price increases at 3.8% of M&A.

In 2021, we observed a deterioration in market cleanliness, which aligns with Australia falling back slightly in the global rankings that year.

In developing our approach to measuring market cleanliness in Australia, we considered a range of international studies from peer regulators, think tanks and academic researchers. We continue to monitor international developments as we enhance and broaden our approach to measuring market cleanliness, including plans to measure cleanliness in markets other than listed equities.

Australia had the lowest rate of M&A deal leaks among global peers, being 55% fewer than the group average (2009–2022)

Table 1: Percentage of abnormal trading preceding M&A announcements

Target listing location	2020	2021	2022	2009–2022
France	3.1% (9)	0.0% (10)	22.2% (1)	**5.2% (9)**
South Korea	12.8% (1)	19.4% (1)	12.8% (2)	**11.9% (2)**
Japan	5.9% (7)	8.8% (6)	11.5% (3)	**6.7% (7)**
Hong Kong	9.7% (3)	15.5% (2)	10.8% (4)	**14.1% (1)**
United States	8.1% (4)	6.1% (8)	10.0% (5)	**7.8% (6)**
Germany	6.3% (6)	11.5% (4)	7.1% (6)	**9.2% (5)**
India	10.8% (2)	12.0% (3)	7.1% (7)	**11.2% (3)**
United Kingdom	5.0% (8)	9.2% (5)	4.8% (8)	**9.5% (4)**
Australia	1.7% (10)	6.3% (7)	4.5% (9)	**3.8% (10)**
Canada	8.0% (5)	5.7% (9)	2.5% (10)	**5.9% (8)**

Source: Adapted from unpublished research conducted by SS&C Intralinks and the M&A Research Centre at City, University of London. Reproduced with permission.

Actions to support market integrity

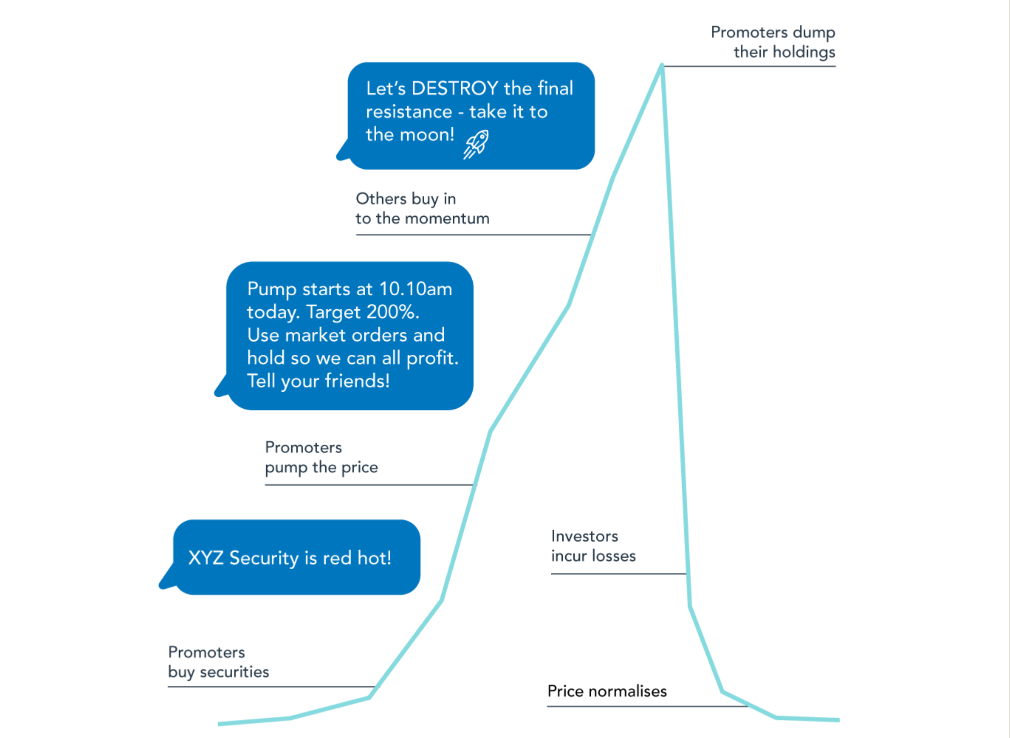
We acted to support market integrity during the 2020–2021 pandemic by:

- intervening early to disrupt 'pump and dump' activity (see Figure 5) by issuing public warnings and posting directly on social media forums to warn members that their actions may be in breach of the law. Coordinated attempts to manipulate the market is a criminal offence. We also issued guidance for market participants in response to rapid growth in retail investor trading and 'meme' stock trading
- disrupting potential unlicensed activity of financial influencers (finfluencers) through direct engagement and releasing Information Sheet 269 *Discussing financial products and services online* (INFO 269) setting out regulatory expectations
- issuing 'Dear CEO' letters to market participants to set out expectations for managing confidential information when staff were working from home
- working with Government and ASX to facilitate a range of temporary capital raising measures to help companies to raise capital, with secondary capital raisings totalling $66 billion in 2020, compared with $46 billion in 2019, and
- focusing on cyber and operational resilience of market operators and market participants. We directed market participants to limit their number of trades so the clearing house could process transactions during the peaks in 2020.

We acted to address the increase in media reports ahead of transactions in late 2023 by:

- commencing targeted surveillances where confidential information in corporate transactions appeared to have been leaked to the media. We are also considering techniques used by international regulatory peers to discourage media leaks from corporate advisers, companies and investors to further inform our approach in Australia
- continuing to monitor trading around significant market announcements to identify and disrupt potential market misconduct
- issuing warnings in our Corporate Finance Update and Market Integrity Update.

Figure 3: Example of social media coordinated pump and dump event



Insider trading affects all Australians

> *'ASIC has a strong record on insider trading prosecutions.*
>
> *Enforcing insider trading laws and prosecuting criminals is essential to ensuring a fair, strong and efficient financial system for all Australians.'*
>
> *ASIC Chair, Joe Longo*

Prosecuting insider trading is a key priority for ASIC

Insider trading is not a victimless crime. It affects the value of investments in shares and in superannuation and distorts market prices. Insider trading undermines investors' confidence in the market and can reduce their participation. If this occurs, it can make it more difficult and more expensive for companies to raise capital, which is a key contributor to job growth in the real economy.

Academic studies have found that effective insider trading enforcement is associated with lower cost of capital, and media coverage on insider trading matters has a deterrent effect on this activity. In addition, strict insider trading laws and enforcement reduce stock market transaction costs.

Note: See Bhattacharya, U & Daouk, H 2002, 'The world price of insider trading', *The Journal of Finance*, vol. 57, no. 1, pp 57–108, Aleksanyan, M et al. 2022, 'I only fear when I hear: How media affects insider trading in takeover targets', *Journal of Empirical Finance*, vol. 67, pp 318–342 and Kwabi, FO & Boateng, A 2021, 'The effect of insider trading laws and enforcement on stock market transaction cost', *Review of Quantitative Finance and Accounting*, vol. 56, pp 939–964.

We remain vigilant in the surveillance of markets, constantly seeking to enhance our capabilities and broaden our coverage. Our real-time trade surveillance data, expertise and tools enable us to automatically hunt for and detect suspected market misconduct.

We have one of the most effective per capita track records in enforcing insider trading matters in the world. We take decisive enforcement actions where misconduct is identified and have multiple investigations underway at any time. Those who are found guilty of insider trading or illegally communicating inside information face a maximum prison term of up to 15 years.

At publication, six insider trading criminal prosecutions are before the courts, and multiple insider trading matters are under active investigation or have been referred by ASIC to the Commonwealth Director of Public Prosecutions for assessment.

Managing inside information

Towards the end of 2023, we observed a deterioration in market cleanliness. This coincided with an increase in media reports ahead of announcements of takeovers, mergers and capital transactions, indicating potential leaks of inside information.

There is a key role for industry participants—listed companies, investors, bankers, brokers and other advisers—to support market cleanliness. These parties have access to inside information and a responsibility to maintain confidentiality and handle the information with appropriate care.

This requires effective policies and procedures overseen by a compliance function for handling inside information and includes implementing effective information barriers, wall-crossing staff who are made aware of inside information, maintaining insider lists and limiting information to a 'need to know' basis.

Market participants should also look to enhance their internal surveillance arrangements and increase the quantity and quality of suspicious activity reporting.

Companies and their advisers should also have appropriate arrangements to handle inside information about their company or proposed transactions they are involved in or advising on.

This includes recording who has been provided with inside information (and when), adopting a 'need to know' approach, requiring external parties to enter confidentiality agreements and ensuring compliance with continuous disclosure obligations.

Failure to manage this information hurts all Australians as these leaks erode trust in our markets and increase the cost of capital for those participating in those markets. We expect those institutions that participate in markets will not just adhere to the letter of the law but use their influence to drive fair, appropriate outcomes in those markets.

Note: See Regulatory Guide 264 *Sell-side research* (RG 264), Report 393 *Handling of confidential information: Briefings and unannounced corporate transactions* (REP 393) and Regulatory Guide 73 *Continuous disclosure obligations: Infringement notices* (RG 73).

CASE STUDY

Former corporate adviser sentenced to two years' imprisonment for insider trading

ASIC action against corporate adviser who engaged in insider trading

In March 2022, following our market surveillance, we commenced an investigation into suspected insider trading of shares in Genesis Minerals Limited (Genesis).

ASIC alleged that Mr Cameron Waugh came into possession of inside information in his role at Omnia Company Pty Ltd (Omnia), where he was advising on a proposed share placement and board restructure for Genesis.

Further intelligence

At the time of our investigation, Mr Waugh was residing overseas. Our intelligence indicated that Mr Waugh had entered Australia in September 2022 and was due to return to South Africa in mid-December 2022. We expedited our investigation so that charges could be laid before Mr Waugh was due to leave Australia.

Arrest warrant and prosecution

When we were alerted to Mr Waugh's impending departure from Australia, we took prompt steps to obtain an arrest warrant before Mr Waugh could leave the country.

In December 2022, Mr Waugh was charged with insider trading and the AFP executed an arrest warrant. At the time of his arrest, Mr Waugh was attending a friend's wedding in Western Australia. Mr Waugh then appeared before the Bunbury Magistrates Court and was granted bail on conditions, including that he could not leave Australia.

Guilty plea and sentencing

On 24 January 2024, Mr Waugh pleaded guilty to insider trading in shares of Genesis between 14 and 21 September 2021, profiting $57,256.

In sentencing Mr Waugh, the judge attributed Mr Waugh's actions to greed, stating: *'You wanted something you did not have and wanted to portray yourself as something you were not … you believed money and the trappings of wealth would validate you … It seems the good will of those supporting you was overridden by your desire for success.'*

On 26 March 2024, the Supreme Court of Western Australia sentenced Mr Waugh to **two years' imprisonment with a non-parole period of nine months.**

Mr Waugh is the first person to be sentenced and serve time in jail in Western Australia under the new penalty provisions for insider trading. As a result of his conviction, Mr Waugh was automatically disqualified from managing corporations for five years.

ASIC's account-based market cleanliness approach was able to capture Mr Waugh's suspicious trading, despite the lack of pre-announcement share price movement in Genesis shares.

What's next

ASIC continues to strengthen its team and its surveillance of listed equity markets. Its cutting-edge approach to market surveillance was recognised when we won the Australian Public Service Data Analytics and Visualisation Award in 2023.

Market cleanliness remains a priority for ASIC. We will continue to monitor developments in innovative data science tools, such as artificial intelligence and machine learning, to consider potential applications for surveillance. These measures will enable us to enhance our capability to detect other forms of insider trading not driven by announcements (such as front running).

We are monitoring changes in the structure of capital markets (including the growth in private markets and changes in the type and activity levels of corporate transactions) to consider how we might assess cleanliness in private markets.

Private markets have reduced financial reporting, disclosure and corporate governance requirements. This reduction in transparency can affect accountability. As private markets increase their activities there are more touch points with public markets, increasing the risk of insider trading.

There are also challenges with liquidity and the quality and consistency of valuations that are yet to be resolved.

While public and private market investments are different, both must support fair investor outcomes. In the coming year, we will expand our market cleanliness work to other products and markets, including debt markets, and look at how companies and regulated firms are managing inside information.

APPENDIX:

Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying information for Figure 2.

Table 2: Market cleanliness over time by account activity and volume

Half-year period ending in	Average anomalous accounts %	Average anomalous volume %
April 2015	0.49%	4.33%
October 2015	0.52%	5.10%
April 2016	0.65%	4.96%
October 2016	0.61%	5.70%
April 2017	0.61%	5.03%
October 2017	0.53%	5.08%
April 2018	0.63%	5.18%
October 2018	0.49%	5.10%
April 2019	0.53%	4.93%
October 2019	0.54%	4.60%

Note: This is the data shown in Figure 2.

Half-year period ending in	Average anomalous accounts %	Average anomalous volume %
April 2020	0.48%	3.78%
October 2020	0.69%	5.51%
April 2021	0.69%	4.91%
October 2021	0.62%	5.22%
April 2022	0.50%	3.94%
October 2022	0.43%	3.82%
April 2023	0.53%	5.54%
October 2023	0.59%	5.07%
April 2024	0.56%	4.96%

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