The good news is that I didn't have to put too much thought into deciding what the column should focus on this week. The bad news, well, there's plenty of that to discuss. I was curious to see the results of TraderDaily's poll about whether Refco's former CEO, Phillip Bennett, should be sent to jail (http://www.traderdaily.com/poll/68.html), but that, at least in my mind, is the tip of the legal iceberg.

Usually icebergs are perfect metaphors for legal actions; they move about as fast as the typical legal proceeding. The Refco scandal, for some reason, is acting much more like a tsunami. Unexpected. Devastating. Rapid. Seemingly without warning, the first wave hit. About two months after a $583 million IPO, Refco was left more or less obliterated after a three day period in which things went from bad to worse, and then from worse to awful, finally sinking to the appalling. Not much of what early last week constituted the Refco conglomerate still exists as I write this, and I have no compelling reason to believe what's left will remain much longer. Wall Street was appropriately stunned. The value of Refco shares plummeted while Mr. Bennett took about 72 hours to go from corporate trading titan to criminal defendant.

Some background, with the caveat that nothing has been proven yet, and Bennett remains innocent unless proven otherwise: Last Wednesday Bennett was arrested and charged with violating 15 U.S.C. § 78j(b). That is the technical statute under which he was charged, but more to the point, the criminal allegations focus on charges that Bennett surreptitiously concealed more than $400 million in bad debts owed to Refco by moving that debt to the books of a separate company that Bennett controlled (Refco Group Holdings or "RGH"). At the end of the day, bad debt – some of it more than seven years old – found its way onto Refco's balance sheets as a receivable that had been paid for. The connection to Bennett's other company was obfuscated.

According to the criminal complaint, a few months before Refco filed for its IPO, Refco loaned one of its customers approximately $335 million. That customer then took those funds and used them to issue a loan to Bennett's RGH $335 million, albeit at a higher interest rate than the interest rate at which Refco's loan had been issued. To bring matters full circle, Bennett allegedly took that $335 million to pay off his own then existing debt to Refco, which is allegedly illegally substituting one debt for the other.

Amidst the whirling waters of confusion, Refco issued a statement to the effect that Bennett had made Refco whole, and sure enough, while Refco was busy announcing it had exiled Bennett, approximately 350 million (in euros) were wired from an anonymous foreign bank into a Bennett/RGH account. I'll honestly admit I don't quite know what to make of this, which is kind of irrelevant. What is relevant is that it appears Michael J. Garcia, Esq., the U.S. Attorney for the Southern District of New York responsible for this investigation, doesn't entirely know what to make of it either. He hasn't said much about the anonymous wire transfer, and the six-page Criminal Complaint is mostly focused on the $335 million loan itself.

Still, as complex as a legal and accounting mess as this is, the underlying elements of the alleged crime are patently clear. Go back to basics – to what all criminal trials start with

– motive and opportunity. As the CEO of Refco right before it was going public, Bennett had all the opportunity one could imagine, and given his take from Refco's IPO, he had roughly 120 million motives. The U.S. Attorney will have to prove up the details, but I'd hardly be surprised if the jurors eventually find that Bennett's convoluted debt transfers were part of a plot to buff up Refco's financials in the run-up to its IPO.

Like I mentioned, there's a lot of bad news to discuss, so I might as well get started. Everything just addressed was really just the beginning of any bad news to come out of this scandal, because the criminal complaint only affects Bennett and the only company to fail was Refco. (That opinion is relative to the enormity of the overall situation; I will freely concede that Refco was one of the largest companies involved in commodities, derivatives and U.S. Treasury markets, operated in 14 countries and served more than 200,000 clients.) Nevertheless, this scandal won't stop with a criminal complaint, and it won't stop with Refco, just as waves tend to cascade, sweeping in a lot of excess dirt along with them.

At a minimum, Bennett allegedly used Liberty Corner Advisors, a New Jersey money-management/hedge firm, to mask his role in assuming Refco's customers' seven to eight years of bad debt, so Liberty is another wave. The following resultant wave is the most obvious – the well-known class-action lawyers waited maybe a day before rushing to slap together class-action lawsuits. The class action wave will include, as the lead underwriters of Refco's IPO, Credit Suisse First Boston, Goldman, Sachs & Co., and Banc of America Securities LLC. All are big players, of course, but as underwriters they should have certain viable legal defenses.

I left the institutional investors which purport to act as fiduciaries for the investing public for last, because I believe this is the critical wave. This is where the real effects of the scandal were felt by real individuals. This wasn't Grandma in a trailer park in Podunk who failed to catch the warning signs. It was the very financial companies that both Grandma and the unsophisticated mass public rely on to help them invest, like Oppenheimer Funds or TIAA-CREF. One can easily see a tsunami of lawsuits being filed against such fiduciaries – and such claims will be difficult to defend. Simply put, it appears these institutions failed to properly review the Refco prospectus.

For all its obfuscations, Refco publicly disclosed more than enough warnings, and did so rather blatantly, in its prospectus (among many other items, Refco disclosed ongoing investigations by the SEC and U.S. Attorney, as well as a disclosure that it was unable to manage its own financial records – which is troubling for a financial services company). TIAA-CREF and other fiduciaries just didn't seem to mind such risks, or worse, neglected to even consider them. We have come to a point where it seems the only people who care what the prospectuses actually disclose are the lawyers who originally prepare the disclosures and the subsequent lawyers who use such disclosures to defend against lawsuits from those who chose not to heed the disclosed warnings.

Bad news indeed, for everyone except the lawyers.