

Fund Finance Friday



Assignments, Market Fundamentals and NDFI Risk

April 24, 2026

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Understanding the Assignment

April 24, 2026



By **Eric Starr**
Special Counsel | Fund Finance

Tucked into the back of every credit agreement there is a “Miscellaneous” section that often gets less attention than the more-heavily negotiated covenants and defaults. While much of this section is “boilerplate” language that is largely consistent from agreement to agreement, there are a few provisions that tend to draw more significant scrutiny. One such provision is the assignability, or lack thereof by one or more parties, to the contract.

While assignment provisions are not unique to the subscription finance space (in fact their existence is mostly universal in financing documents), there are some unique concerns that are raised in the context of subscription credit facilities. In this article, we set forth an explanation of the provisions generally and then address some aspects which are of particular interest to subscription lenders and fund borrowers.

Assignments Generally

Pursuant to New York law, contracts are freely assignable unless expressly stated otherwise. Both lenders and borrowers have their own reasons to resist the assignment of a loan to another party, which are discussed in more detail below. As a result, loan agreements set forth in some detail the conditions under which a loan may be, or not be, assigned. These provisions govern things such as (i) which party is permitted to or prohibited from assigning its interests, (ii) who and/or which types of entities are eligible to be an assignee, (iii) what consents must be obtained and under what circumstances, and (iv) other particulars such as minimum amounts, transfer fees, etc.

Most loan agreements include language stipulating that the contract is binding on successors and assigns. The latter arises when one party to the contract wishes to sell or *assign* all or a portion of its interests and obligations to a third party. If agreed to, the third party then *assumes* the obligations (typically documented via an Assignment and Assumption Agreement).

Distinguishing Assignments from Participations

An assignment establishes privity between a borrower and the assignee lender – meaning there are direct contractual rights and obligations. The assignee lender buys the obligation/debt and becomes the lender and this assumes voting rights, obligations to fund borrowing requests, rights to receive fees and other deliverables required by the loan agreement, etc. Following an assignment, the new lender can directly sue the borrower if the contract is breached and *vice versa*.

It is worth pausing to distinguish an assignment from its cousin, the participation. Participations do not establish any direct contractual rights between the participant and borrower but are instead derivative of the rights of the lender of record, who remains obligated to the borrower. The participant lender does not become party to the loan agreement and is not considered a “lender” thereunder.

Borrowers and participants *cannot* sue one another directly. Because participations convey no contractual privity and less rights than an assignment, participations give rise to no consent rights from borrowers. The lender of record and the participant can (and in practice often do) agree separately as to issues and how the lender will vote, but ultimately it will be the lender not the participant voting. In fact, in many cases a lender may grant a participation absent the borrower’s knowledge.

Consent Rights, Eligible Assignees and Competitors

On the borrower side, as a general rule, borrowers cannot assign their interests and obligations under a loan agreement. This principle makes sense if one considers that a lender has underwritten a particular borrower in agreeing to make a loan. To illustrate, one might imagine a lender being comfortable making a loan on a given set of terms and pricing to a highly rated public entity.

However, if the borrower were able to assign such loan to a distressed entity, perhaps with a much lower rating, the lender would involuntarily become party to a credit facility it would have never originated in the first place. It is worth

noting that this approach is consistent with the covenant that prevents a borrower from merging with another entity, unless, among many other requirements, the borrower is the surviving entity.

On the lender side, lenders may wish to assign a loan for a variety of reasons such as eliminating concentrated exposure to a particular sponsor, obtaining capital relief or even at the direction of a regulator. Assigning a loan allows a lender to accomplish such goals more quickly than waiting for the debt to mature.

When it comes to a lender's ability to assign its interests and obligation, there are a myriad of approaches to commonly contested issues. As one can imagine, such differences stem from a variety of distinct facts, including, but not limited to a particular lender's (i) internal policies, (ii) internal sensitivity to confidential information, (iii) relationship (or lack thereof) with a proposed new lender, (iv) comfort level with a sponsor's size and credit profile, (v) credit appetite related to the size and terms of the facility, and/or (vi) their view of general market conditions.

Some loan agreements contain little or no restrictions on assignments by lenders. For some lenders, free assignability is firmly held institutional policy. However, frequently borrowers obtain a right to consent to assignments (such consent customarily not be unreasonably withheld or delayed), at least under certain circumstances. However, such consent rights are typically forfeited if the borrower is in default.

For some borrowers, the identity of potential new lenders is a pressing concern, hence the effort to obtain additional control over future assignments. Many funds seek to avoid having a competitor purchase their debt and become their lender. One can imagine that there is a heightened sensitivity in the private debt and credit markets where funds are especially cautious about the prospect of their confidential information becoming available to a direct competitor or being beholden to a competitor in a borrower/lender relationship, especially if the "problem" were to occur under the credit facility. Funds are particularly cautious of the prospect of anything that might expose sensitive information about the fund's investors or capital commitments to an entity that a fund would least want to have such information.

One approach would be to simply include a definition of "Competitors." Such definitions may target a particular investment strategy or in some cases funds generally; the issue with such approaches is that they leave room for interpretation and generally can become overly inclusive. The more broadly the definition of a "Competitor" is constructed, the more likely the restrictions only apply prior to a default.

There is an interesting inflection point worth considering as parties seek to balance their interests. Following a default or borrower non-performance is the most-likely time in which a lender might want or need to offload the debt at issue. Meanwhile, the borrower, at a time of distress, is most vulnerable to and concerned about competitors being eligible assignees of their credit facility.

As a compromise – as opposed to agreeing to never assign to a "competitor" and the burden on the lender to determine who is or is not a "competitor" the borrower and lender will sometimes agree to a list of disqualified lenders (often called a DQ list or a blacklist). This list would be agreed to and scheduled at closing, and thereafter, amended solely by mutual agreement.

Another related issue on this path is whether or not the DQ list applies following an event of default. A lender's natural inclination is likely that such restrictions are removed when a facility is in default. In situations where a DQ list survives a default, it typically does so only for a specified period of time following the occurrence of the default. For example, if there is an ongoing default for 30 days, the protection of the DQ list is lost. We also note that maintaining a permanent DQ list, notwithstanding any continuing default, is rare.

Conclusion

Assignment restrictions are commonplace in loan documentation as a means of overriding the general law that contracts are freely assignable. However, in the context of subscription finance, there are unique concerns that frequently lead to significant negotiation around the terms governing assignments in order to determine what restrictions and consents are appropriate for each facility, lender and borrower. Both lenders and borrowers (and their respective counsel) must weigh competing interests, needs and sensitivities in order to determine an agreeable path forward.

Checking in on Private Market Fundamentals

April 24, 2026



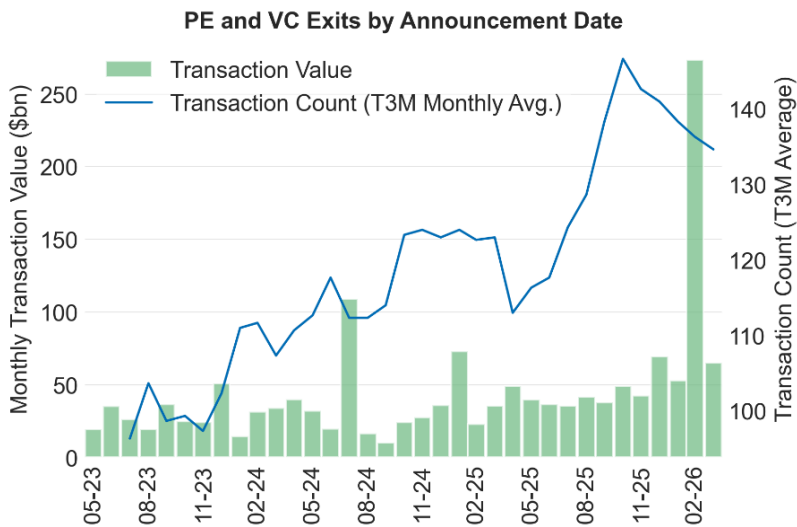
By **Chris van Heerden**
Director of Market Research | Fund Finance

We built our 2026 outlook around three themes: (1) Based on accommodative capital markets conditions, we expected private market transaction volumes to extend the recovery that set in in 2025; (2) We emphasized that bank lending appetite is a key driver of fund finance origination volume and that balance sheet trends and capital regulation developments would likely support fund lending growth; and (3) We flagged a concern that higher interest rates could become a limiting factor to the fundraising recovery.

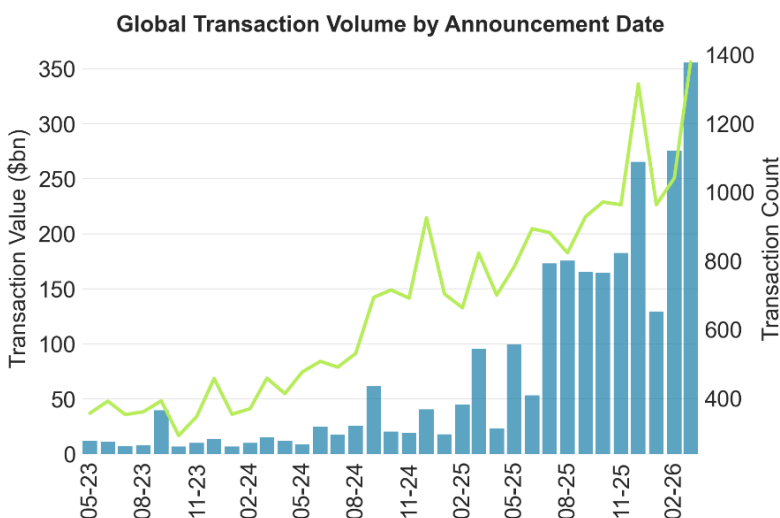
We review these themes in light of broader market volatility due to the Iran conflict, questions on future capital flows from Middle East investors, elevated redemptions from semi-liquid private credit vehicles, and uncertainty around credit fund asset values. Despite these developments, we find that transaction volume has continued to gain momentum and the bank lending capacity outlook has further strengthened.

Transaction Volume Continues to Improve

While PE and VC exits slowed in March, the longer-term trend remains positive. Breakout transaction volume for the month suggests that, while exits were constrained, funds went to work on deployment.

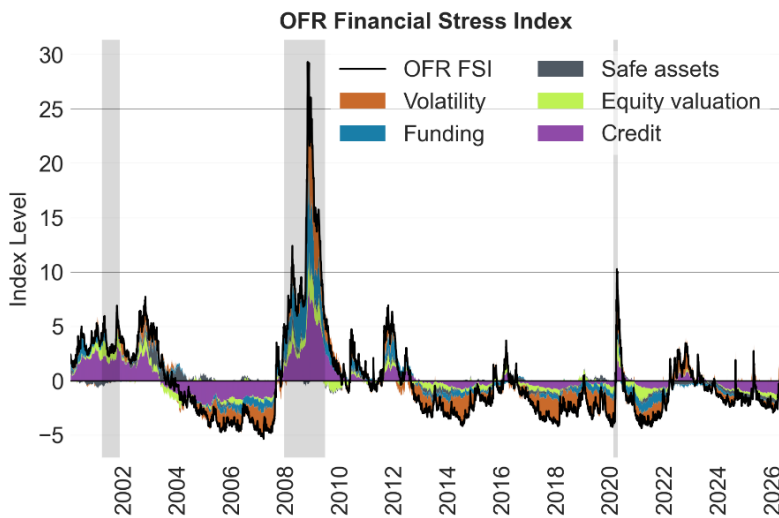


Source: S&P Capital IQ and Cadwalader, Wickersham & Taft LLP.



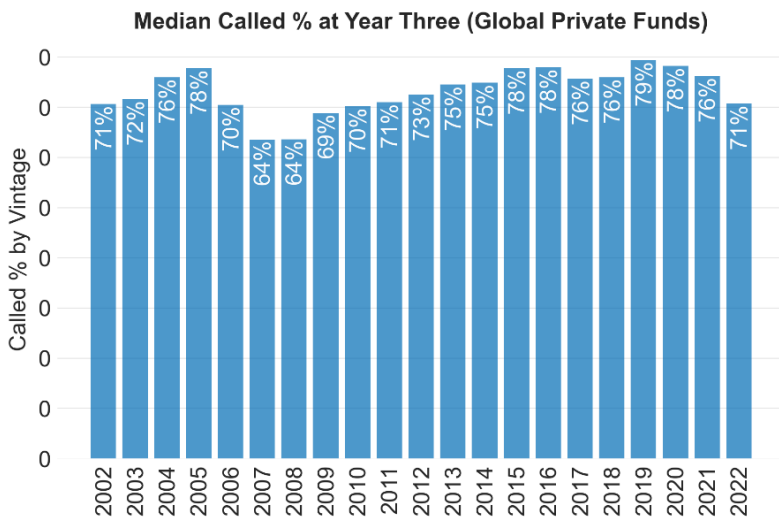
Source: S&P Capital IQ and Cadwalader, Wickersham & Taft LLP.

Broader market conditions support further gains. The Office of Financial Research **Financial Stress Index**, which measures 33 market variables, including yield spreads, valuation measures, and interest rates shows that Iran conflict stress has thus far proved short-lived with the index returning to January–February levels. The index signals accommodative conditions that should support further deal activity gains.



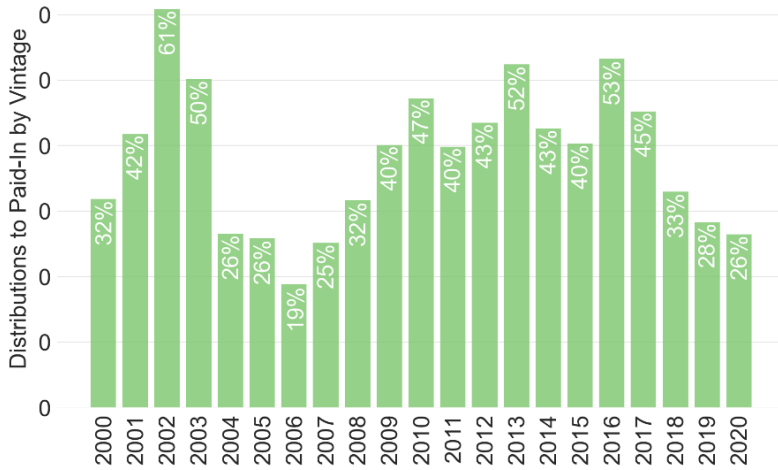
Source: U.S. Department of the Treasury Office of Financial Research and Cadwalader, Wickersham & Taft LLP.

Accelerating deal activity has to be viewed in the context of the nearly \$13 trillion in accumulated private fund AUM. Because of the size of the market, two things can be true at the same time: Deal activity may be accelerating while distributions remain under pressure.



Source: Preqin, S&P Capital IQ, and Cadwalader, Wickersham & Taft LLP.

Median DPI at Year Five (Global Private Funds)



Source: Preqin, S&P Capital IQ, and Cadwalader, Wickersham & Taft LLP.

Bank Lending Capacity—More Runway

Bank capacity (willingness and ability to extend credit) is an often-overlooked driver of fund finance origination volume. The industry banks only a fraction of the \$1.3 trillion in funds raised per year. Within the subset of and bankable institutional LP pool funds, the swing factor is bank capacity.

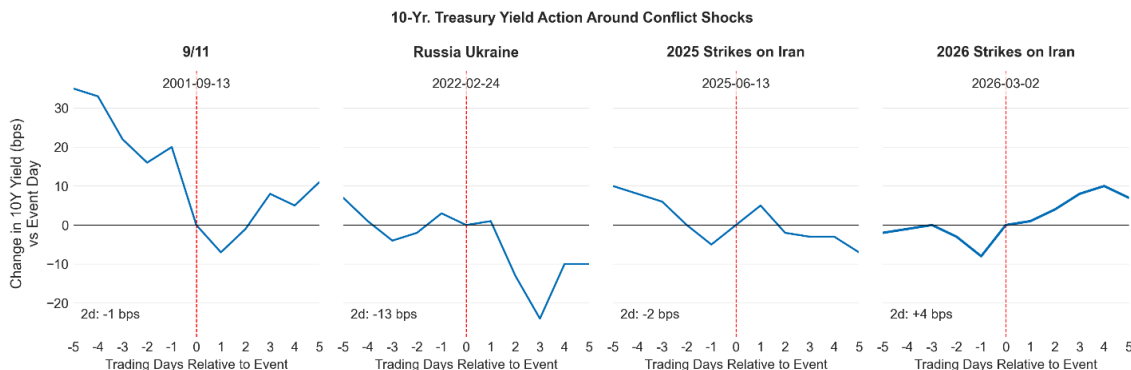
Bank capacity is positioned to support origination growth in 2026. Aggregate indicators across balance-sheet constraints, funding costs, credit stance, and loss dynamics are all **positioned to support growth** for banks with \$100 billion or more in total assets (although subscription facility economics have tightened).

The **recent Basel III re-proposals** add long-term support to an origination growth thesis through the 65% risk weight available to unlisted corporate exposures (currently 100% if not publicly traded). Specifically, Category I and II banking organizations will have broader access to a 65% risk weight for non-subordinated corporate exposures based on a determination that the exposure is to an investment-grade counterparty using an internal credit risk rating system that is used in actual business and risk-management decisions and is subject to validation requirements. The lower risk weight category is currently only available to publicly traded entities.

Interest Rates Inform Fundraising

Over the past five years, we've often related capital velocity in private markets directly to fundraising, with the thesis that improvement in the return of capital to investors would drive fundraising. At this juncture, we see higher interest rates loosening the connection between the two. As depressed distributions defer fund cash flow and duration extends into a higher rate environment, improved capital circulation in private markets may become less directly linked to fundraising.

In 2026, Treasury buyers have been quick to look past conflict-driven dislocation to instead anticipate rising inflation, fiscal impulse, and rising Treasury supply. These dynamics were visible in March when Treasury auction internals weakened and long-end yields failed to mount a flight-to-quality rally amid geopolitical conflict. Instead, long-end rates are higher today than at the beginning of the Iran conflict.

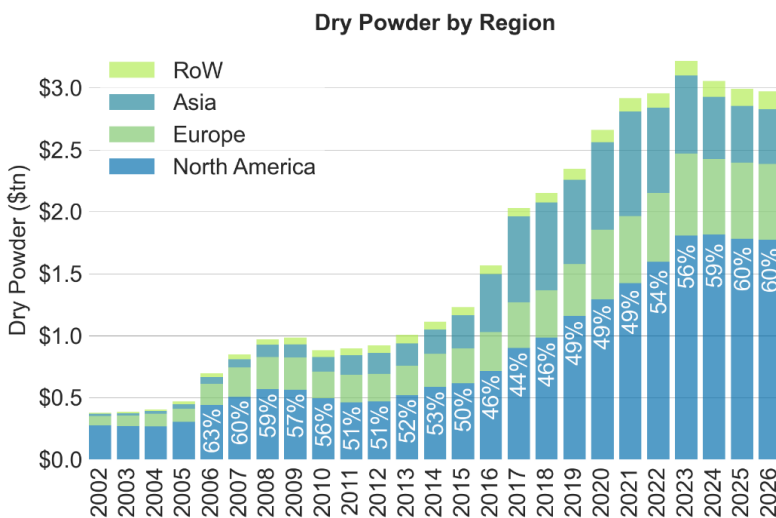
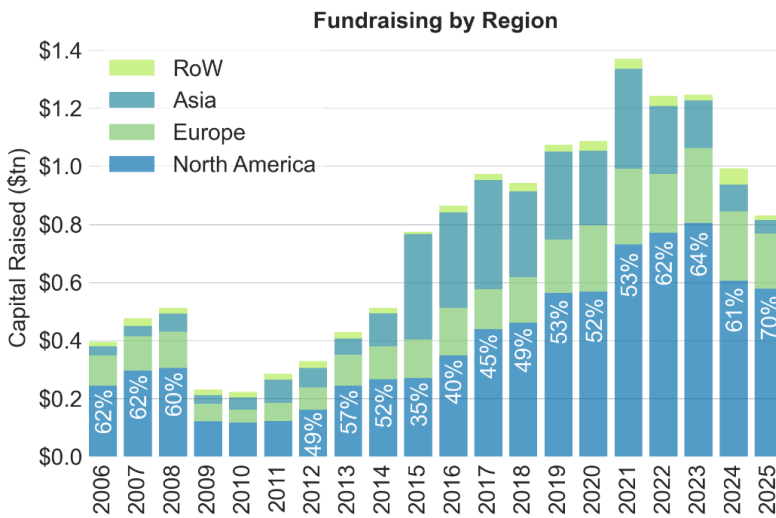


Sustained higher long-end rates signal (1) that investors may be reluctant to take on duration amid inflation uncertainty and the high Federal deficit, and (2) that liquid fixed income products will be relatively more competitive to the static 8% preferred return embedded in closed-end funds. Over time, lengthened durations for private fund investments may influence allocation decisions.

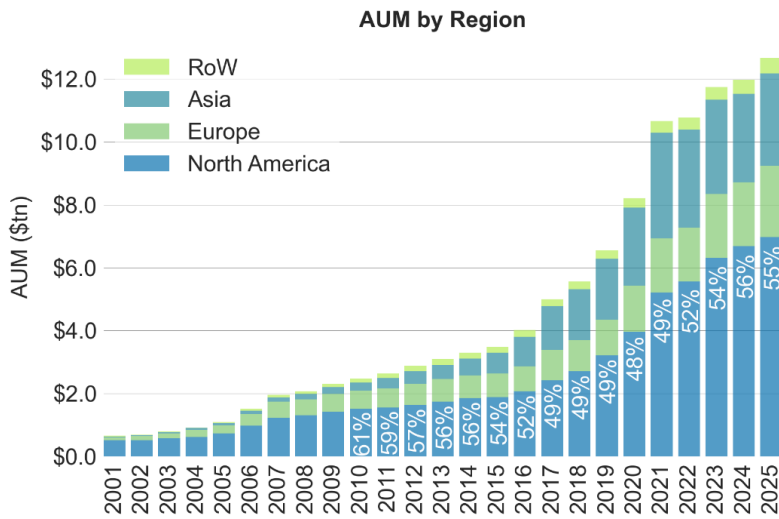
For fund finance lenders this dynamic may continue to translate to stretched facility closing timelines, long fund intervals, and ultimately interest rates imposing a soft ceiling on the rebound in fundraising. In this context, GPs and LPs are likely to continue to **engineer liquidity** through financing structures and in the secondaries market.

A Global Perspective

On an international basis, the addressable fund finance market varies by product segment. In recent years, fundraising has skewed toward North America, implying that new money subscription lines are more likely to be sourced from this region. (In process Asia-focused fund closings will influence the mix this year.) Dry powder, by contrast, is more broadly distributed by region.



Compared to the subscription oriented measures (fundraising and dry powder), the more NAV oriented AUM is less concentrated in North America, adding context to the view that NAV uptake is higher outside this region.



Conclusion

To complete the picture on private markets and the outlook for fund finance, it's helpful to review the drivers that have supported fund finance origination growth over the years:

1. Because fund finance does not primarily rely on a capital markets funding mechanisms, episodic credit market volatility has a far less disruptive impact on the market.
2. Unlike the almost all other secured credit products, subscription collateral values are not tied directly to interest rates. Corporate loans that rely on interest coverage ratios, consumer loans tied to borrower debt servicing capacity, or discounted cash flow assets experience an loan interest income benefit from higher rates, but with some offsetting impact on collateral values.
3. Finally, fund finance services a large global sponsor base with many dimensions of diversification across region, strategy, investment asset class, investor base, and vintage.

As in the past, these differentiating factors will continue to provide a supporting foundation in 2026.

Charlotte Office Celebrates 30th Anniversary

April 24, 2026



By **Wes Misson**
Co-Managing Partner



Cadwalader's Charlotte office recently celebrated its 30th anniversary, and in recognition of this milestone we invite you to [watch this video](#), which captures the story, people and impact behind the office's first three decades.

What began as a small, entrepreneurial outpost with just a handful of lawyers has grown into the firm's second-largest office and a cornerstone of Cadwalader's global platform. We set the trend as the first of many Wall Street firms to establish a presence in what is now the second-largest financial center in the United States.

The Charlotte team built its reputation on collaboration, mentorship and a shared commitment to excellence — values that continue to shape how the office serves clients and how the team supports one another.

The future for our Charlotte office, an engine of our Fund Finance practice, is extremely bright. We're continuing to set the pace in lender commitments, and with the anticipated launch of Hogan Lovells Cadwalader on July 1, we're well positioned to accelerate our growth and investment in you.

FDIC Risk Review Assesses Bank NDFI Loan Exposure

April 24, 2026



By **Chris van Heerden**

Director of Market Research | Fund Finance

The FDIC published its **annual review** of funding, interest rates, and credit risks for the banking system this week. On loans to non-depository financial institutions (NDFI), the report concludes, “The composition and structure of bank loans to NDFIs generally exhibit a lower degree of credit risk.

Supervisory observations reflect strong historical performance and more favorable credit ratings for bank loans to NDFIs compared to traditional commercial loans.” Consistent with our **prior reporting**, the report finds NDFI non-performing loan rates remain well below other institutional borrower lending categories.

Last Call - FFA U 1.0: EMEA

April 24, 2026



Time is running out to join the Fund Finance Association in London for this comprehensive two-day fund finance training program, offering a comprehensive look at the fund finance market through expert-led sessions on core products, legal and documentation considerations, market dynamics and key industry developments.

Cadwalader partners **George Pelling** and **Bron Jones** are on the agenda on Wednesday, April 29. George will speak at 9:00 a.m. in the session “The LPA,” followed by Bron at 10:00 a.m. in “Side Letters, Subscription Agreements & Investor Letters.”

Event Details

- Cost: £399
- Dates: April 28 & 29, 2026
- Format:
 - Location: Deutsche Bank, 21 Moorfields, London, EC2Y 9DB
 - Day One – April 28: In-Person Training & Networking Reception
 - Day Two – April 29: Virtual Training

Day one will conclude with a networking reception, providing an opportunity to continue discussions and connect with peers and speakers. Speakers will be announced soon.

View the agenda [here](#) and register [here](#).

Jeremy Collier to Keynote Inaugural FFA Fall Forum

April 24, 2026

FUND FINANCE ASSOCIATION

FALL FORUM

OCTOBER 15, 2026 | NEW YORK



Jeremy Collier, Chief Investment Officer and Managing Partner of Collier Capital, will be a keynote speaker at the inaugural FFA Fall Forum on Thursday, October 15 in New York.

Widely regarded as the “godfather of secondaries,” Jeremy founded Collier Capital in 1990 and has played a pivotal role in pioneering and shaping the private equity secondaries market.

The Fall Forum is being held from 1:00 to 7:00 p.m. at the Sheraton New York Times Square.

Register now to take advantage of the the early bird rate of \$399.

Additional information about the Fall Forum is [available here](#).

10th Annual European Fund Finance Symposium Being Held June 24

April 24, 2026

10TH ANNUAL



EUROPEAN FUND FINANCE SYMPOSIUM

JUNE 24, 2026 | OLD BILLINGSGATE | LONDON

The 10th annual European Fund Finance Symposium will be held in London on Wednesday, June 24 and will feature a closing keynote from world-renowned economist Nouriel Roubini.

In his keynote, Dr. Roubini will share his perspective on the global economic outlook and the forces likely to shape markets, policy, and geopolitics in the years ahead.

Location

1 Old Billingsgate Walk
Riverside, 16 Lower Thames St,
London EC3R 6DX

The full agenda will be shared soon.

Individual passes for the 2026 European Symposium are £2,000.

You can register now [here](#).

Fund Finance Hiring

April 24, 2026

Fund Finance Hiring

Here is who's hiring in fund finance:

Cadwalader, Wickersham & Taft LLP is seeking associates with three to six years of relevant experience for its Fund Finance practice in New York, Charlotte or London. Qualified candidates will have experience in syndicated lending, commercial lending, leverage finance, fund formation, CLOs, asset-based lending, NAV financings or acquisition financings. Candidates must possess excellent academic credentials and solid legal experience. Selected candidates will get extensive interaction with preeminent bank, asset manager and lending clients. If interested, [please email Margaret Cart](#).

SMBC is seeking a NAV Analyst in New York. The individual will assist in the structuring and executing complex structured finance transactions for SMBC's Fund Finance Solutions Department with a focus on NAV, Hybrid, GP as well as other fund financing solutions. The analysts scope of responsibilities will include assisting in deal structuring, arranging, deal monitoring and collaborating with the Bank's Loan Syndication department. The ideal candidate will have 0-2 years of relevant experience and strong financial modeling, financial accounting and time management skills. Learn more [here](#).

Mitsubishi UFJ Trust and Banking Corporation, New York Branch (MUTB-NY) is seeking a Fund Finance Account Officer - AVP. This individual will: support the team in structuring and managing fund finance transactions; collaborate with clients and affiliated fund administrators for monitoring and reporting purposes; review and analyze fund financial statements, borrowing base certificates, and formation documents; analyze and identify risks of fund financing; and prepare credit write-ups and reports for the Head Office. Interested candidates can [apply on LinkedIn](#).

Moody's Ratings is seeking two Vice Presidents-Senior Analysts (Fund Finance). The individuals' responsibilities will include leading the analysis for assigning new ratings to fund finance transactions, contributing to methodology and technology development projects, building and maintaining strong relationships with fund sponsors, lenders, and arrangers, and presenting at industry events, conferences, and webinars. Candidates must have at least eight years of credit or risk assessment experience with deep sector knowledge and excellent communication skills. Learn more [here](#). Contact Jimmy Smith at Jimmy.Smith@moodys.com if you have any questions.

Santander is seeking a Structured Finance Analyst in New York. The individual will be responsible for supporting the Fund Solutions Group across the range of products and solutions, from Equity & Credit NAVs, Subscription lines, ABLs, GP lines and other related Equity financing solutions. The successful candidate will be expected to support the transaction across the full life cycle of the deal from origination, credit analysis, execution and active portfolio management. The role will cover a broad range of products and private capital funds with a focus in Private Equity, Infrastructure and Real Estate strategies. Interested candidates should email their resume and a subject line of "Fund Solutions Analyst" to both atef.hasan@santander.us and kyle.wettlaufer@santander.us.

Stifel is seeking a Director/Managing Director of Fund Banking (Fund Finance). This individual will be the lead business development position for New York City and surrounding northeast geographies and will be focused on building new Fund Banking/Fund Finance business with VC/PE firms and being the senior relationship manager to those firms. Learn more [here](#).

Redding Ridge Asset Management, which was established and seeded by Apollo Global Management, is seeking an Associate, CLO Structuring to join the firm's dynamic Structuring & Advisory team, supporting both its market-leading global CLO issuance business and other platforms within the Apollo ecosystem utilizing securitization technology. Learn more [here](#).

Goldman Sachs is seeking candidates to fill two Vice President roles, including:

A **Vice President** on the Private Lending Capital Call Financing (CCF) team in London, which is an integral part of the Private Bank's alternative asset lending capabilities. The candidate will evaluate all risk and economic implications of transactions, using strong analytical and technical skills and advise and develop credit solutions for clients that meet their needs and remain within acceptable risk parameters for the Bank. Learn more [here](#).

A **Vice President** on the Capital Call Financing (CCF) team in New York. This role sits at the intersection of origination, underwriting, and relationship management, supporting private equity and alternative investment

sponsors with bespoke subscription finance solutions. The individual will be responsible for sourcing opportunities, structuring facilities, and ensuring disciplined credit execution in partnership with Credit Risk Management and broader Private Bank stakeholders. Learn more [here](#).

Harneys (Luxembourg) is seeking associates with three to six years of relevant experience for its Fund Finance, Investment Funds and Corporate practices in Luxembourg. Qualified candidates will have experience in one of subscription finance, NAV financings, leverage finance, fund formation, securitization, or general corporate and commercial matters (including mergers, acquisitions and restructuring). Applications of interest should be sent to Cyrielle Nicolas at cyrielle.nicolas@harneys.com.