

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

LM FUNDING AMERICA, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

47-3844457

(I.R.S. Employer
Identification No.)

1200 West Platt Street, Suite 1000
Tampa, Florida

(Address of principal executive offices)

33606

(Zip Code)

LM Funding America, Inc. 2021 Omnibus Incentive Plan
(Full title of the plan)

Bruce Rodgers
President and Chief Executive Officer
1200 West Platt Street, Suite 1000
Tampa, Florida 33606
(813) 222-8996

(Name, address and telephone number, including
area code, of agent for service)

Copy to:
Curt Creely, Esq.
Foley & Lardner LLP
100 North Tampa Street
Suite 2700
Tampa, Florida 33602
(813) 229-2300

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, par value \$0.001 per share	5,000,000 shares	\$ 4.08	\$ 20,400,000	\$ 1,891.08

- (1) In addition, pursuant to Rule 416 under the Securities Act of 1933, in the event of a stock split, stock dividend, or similar transaction involving the Common Stock, in order to prevent dilution, the number of shares registered shall be automatically increased to cover additional shares.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act of 1933 on the basis of the average of the high and low prices of the Common Stock as reported on the Nasdaq Capital Market on January 18, 2022.

EXPLANATORY NOTE

On October 27, 2021, the Board of Directors of LM Funding America, Inc. approved the adoption of the LM Funding America, Inc. 2021 Omnibus Incentive Plan (the “Plan”), subject to stockholder approval at the 2021 Annual Meeting of Stockholders (the “2021 Annual Meeting”). On December 23, 2021, the Plan was approved by our stockholders at the 2021 Annual Meeting. The Plan became effective on October 27, 2021. The maximum number of shares of common stock, \$0.001 par value per share (the “Common Stock”) that may be delivered to participants and their beneficiaries under the Plan is five million (5,000,000). The Plan contains an “evergreen” provision, which allows for an automatic annual increase in the number of shares of Common Stock available under the Plan on January 1 of each year commencing on January 1, 2023 and continuing through December 31, 2031, in an amount equal to the least of (i) 1,000,000 shares of Common Stock; (ii) 10% of the outstanding shares of all classes of Common Stock as of the last day of the immediately preceding fiscal year; or (iii) such other number of shares of Common Stock as the board of directors may desire.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document or documents containing the information specified in Part I are not required to be filed with the Securities and Exchange Commission (the “Commission” or “SEC”) as part of this Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed with the Commission by LM Funding America, Inc. (the “Company”) are hereby incorporated herein by reference:

- (a) [The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020, filed with the SEC on March 31, 2021](#) as amended by the amendment to our [Annual Report on Form 10-K/A, filed on April 30, 2021](#)
- (b) [The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021, filed with the Commission on November 15, 2021](#)
- (c) [The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2021, filed with the Commission on August 16, 2021](#)
- (d) [The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021, filed with the Commission on May 14, 2021](#)
- (e) The Company's Current Reports on Form 8-K and Form 8-K/A filed with the SEC on [January 29, 2021](#); [February 11, 2021](#); [May 6, 2021](#); [September 15, 2021](#); [October 6, 2021](#); [October 8, 2021](#); [October 20, 2021](#); [November 1, 2021](#); [November 10, 2021](#); [December 7, 2021](#); [December 13, 2021](#); [December 14, 2021](#); and [December 28, 2021](#); and
- (f) The description of the [Company's common stock contained in Exhibit 4.8 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019](#) filed with the SEC on April 14, 2020, including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of filing of this Registration Statement and prior to such time as the Company files a post-effective amendment to this Registration Statement that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law ("DGCL") enables a corporation in its certificate of incorporation to eliminate or limit the personal liability of a director for violations of the director's fiduciary duties, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions pursuant to Section 174 of the DGCL or (iv) for any transaction from which a director derived an improper personal benefit. Our certificate of incorporation includes a provision that eliminates the personal liability of directors for monetary damages for actions taken as a director to the fullest extent authorized by the DGCL.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation and certain other persons serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in a similar capacity against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no

indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our certificate of incorporation and by-laws provide indemnification for our directors, officers and employees to the fullest extent authorized by the DGCL. We will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was, or has agreed to become, a director, officer or employee of the Company, or, while a director, officer or employee of the Company, is or was serving at our request as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such indemnitee to the broadest extent permitted by the DGCL. Our certificate of incorporation and by-laws provide for advancement of expenses to an Indemnitee, provided that, to the extent that the DGCL requires, an advance of expenses incurred by an Indemnitee may only be made by delivery to the Company by the Indemnitee of an undertaking to repay all amounts so advanced if it is finally determined that such Indemnitee was not entitled to be indemnified by the Company. Our certificate of incorporation and by-laws also permit us to enter into agreements with any person that provide for indemnification greater or different than the indemnification provided in our certificate of incorporation or by-laws.

We have entered into separate indemnification agreements with each of our directors and executive officers. Each indemnification agreement provides, among other things, for indemnification to the fullest extent permitted by the DGCL against any and all expenses, judgments, fines, penalties, and amounts paid in settlement of any claim. The indemnification agreements provide for the advancement or payment of certain expenses to the indemnitee and for reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law or the indemnification agreement.

We may choose to obtain a general liability insurance policy to protect any director, officer, employee and agent of the Company, any director, officer, employee and agent of a subsidiary of the Company, and any person serving as a director, officer, partner, member, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against liability asserted against such person or incurred by such person in any such capacity or arising out of the person's status as such.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act") may be permitted to directors, officers, or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit Number	Description
4.1	Certificate of Incorporation of LM Funding America, Inc., as amended.
4.2	By-Laws of LM Funding America, Inc. (incorporated by reference to Exhibit 3.2 to the Registration Statement on Form S-1 filed on June 25, 2015 (Registration No. 333-205232)).
4.3	LM Funding America, Inc. 2021 Omnibus Incentive Plan. (incorporated by reference to Exhibit 10.1 of our Current Report on Form 8-K filed on November 1, 2021)
5.1	Opinion of Foley & Lardner LLP.
23.1	Consent of MaloneBailey, LLP.

23.2	Consent of Foley & Lardner LLP (contained in Exhibit 5.1 hereto).
24.1	Power of Attorney (included on the signature page hereto).

Item 9. Undertakings.

(a) The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tampa, State of Florida, as of January 24, 2022.

LM Funding America, Inc.

By: /s/ Bruce Rodgers
Bruce Rodgers
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities indicated as of January 24, 2022. Each person whose signature appears below constitutes and appoints Bruce Rodgers and Richard Russell, and each of them individually, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and any additional registration statement to be filed pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>
<u>/s/ Bruce Rodgers</u> Bruce Rodgers	President and Chief Executive Officer (Principal Executive Officer) and Chairman of the Board
<u>/s/ Richard Russell</u> Richard Russell	Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Andrew Graham</u> Andrew Graham	Director
<u>/s/ Carollinn Gould</u> Carollinn Gould	Director
<u>/s/ Fred Mills</u> Fred Mills	Director
<u>/s/ Douglas I. McCree</u> Douglas I. McCree	Director
<u>/s/ Joel E. Rogers</u> Joel E. Rogers	Director
<u>/s/ Frank Silcox</u> Frank Silcox	Director

**CERTIFICATE OF INCORPORATION
OF
LM FUNDING AMERICA, INC.
A Stock Corporation**

LM Funding America, Inc. files this Certificate of Incorporation (the "Certificate of Incorporation") pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Corporation's corporate existence shall commence upon the filing of this Certificate of Incorporation with the office of the Secretary of State of the State of Delaware in accordance with the DGCL (the "Effective Time") and the Certificate of Incorporation of LM Funding America, Inc. shall be as follows.

**ARTICLE I
NAME**

The name of the Corporation is LM Funding America, Inc. (the "Corporation").

**ARTICLE II
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the State of Delaware is The Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle, Zip Code 19801. The name of its registered agent at such address is The Corporation Trust Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

**ARTICLE III
PURPOSE**

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV
CAPITAL STOCK**

SECTION 1. The aggregate number of shares of all classes of capital stock which the Corporation shall have the authority to issue is One Hundred Million (100,000,000) shares, consisting of Twenty Million (20,000,000) shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), and Eighty Million (80,000,000) shares of common stock, par value \$0.001 per share (the "Common Stock").

SECTION 2. The preferences, limitations, designations and relative rights of the shares of each class and the qualifications, limitations or restrictions thereof shall be as follows:

A. Preferred Stock.

1. Authorization; Series; Provisions. The Board of Directors of the Corporation is hereby expressly authorized, subject to limitations prescribed by law and the provisions of this Article IV, to provide for the issuance of shares of the Preferred Stock in series, and by filing a certificate pursuant to the DGCL, to establish from time to time the number of shares to be included in each such series and to fix the designations, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such powers, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as are stated and expressed herein or in a resolution or resolutions providing for the issuance of such series, adopted by the Board of Directors.

2. Reacquired Shares. Shares of Preferred Stock which shall be issued and thereafter acquired by the Corporation through purchase, redemption, exchange, conversion or otherwise shall return to the status of authorized but unissued Preferred Stock, undesignated as to series, unless otherwise provided in the resolution or resolutions of the Board of Directors.

B. Common Stock.

Except as shall otherwise be stated herein or as otherwise required by applicable law, all shares of Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions. The Common Stock shall be subject to all of the rights, privileges, preferences and priorities of the Preferred Stock as set forth in the resolution or resolutions providing for the respective series of Preferred Stock.

1. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

2. Dividends. Subject to the rights of each series of the Preferred Stock, dividends, or other distributions in cash, securities or other property of the Corporation may be declared and paid or set apart for payment upon the Common Stock by the Board of Directors from time to time out of any assets or funds of the Corporation legally available for the payment of dividends, and all holders of Common Stock shall be entitled to participate in such dividends ratably on a per share basis.

3. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, and after the holders of the Preferred Stock of each series shall have been paid in full the amounts to which they respectively shall be entitled in preference to the Common Stock in accordance with the terms of any outstanding Preferred Stock and applicable law, the remaining net assets and funds of the Corporation shall be distributed pro rata to the holders of the Common Stock and the holders of any Preferred Stock, but only to the extent that the holders of any Preferred Stock shall be entitled to participate in such distributions in accordance with the terms of any outstanding Preferred Stock or applicable law. A consolidation or merger of the Corporation with or into another corporation or corporations or a sale, whether for cash, shares of stock, securities or properties, or any combination thereof, of all or substantially all of the assets of the Corporation shall not be deemed or construed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this paragraph.

4. No Preemptive Rights. No holder of Common Stock of the Corporation shall be entitled, as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock of any class or series whatsoever or of securities convertible into stock of any class whatsoever, whether now or hereafter authorized and whether issued for cash or other consideration, or by way of dividend.

5. Ownership. The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

ARTICLE V EXISTENCE

The Corporation is to have perpetual existence.

ARTICLE VI BOARD OF DIRECTORS

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, and the directors need not be elected by written ballot unless required by the By-laws of the Corporation. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend, change, add to or repeal the By-laws of the Corporation.

ARTICLE VII NUMBER, ELECTION AND TERMS OF DIRECTORS

SECTION 1. Number of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed in such manner as prescribed in the By-laws of the Corporation, or from time to time by action of a majority of the members of the Board of Directors then in office, but in no event shall such number of directors be less than one nor more

than fifteen. Elections of members of the Board of Directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be held at the annual meeting of stockholders, and each member of the Board of Directors shall hold office until such director's successor is elected and qualified, subject to such director's earlier death, resignation, disqualification or removal.

SECTION 2. Director Class and Term Expiration. The Board of Directors shall be divided into three classes, as nearly equal in numbers as possible, designated Class I, Class II and Class III. The initial Class I Directors shall serve for a term expiring at the first annual meeting of stockholders of the Corporation following the effective time of this Certificate of Incorporation; the initial Class II Directors shall serve for a term expiring at the second annual meeting of stockholders following the effective time of this Certificate of Incorporation; and the initial Class III Directors shall serve for a term expiring at the third annual meeting of stockholders following the effective time of this Certificate of Incorporation. At each annual meeting of stockholders, the successors of the class of Directors whose term expires at that meeting shall be elected to hold office for a term expiring at the third annual meeting of stockholders to be held following their election, with each Director in each such class to hold office until his or her successor is duly elected and qualified. The provisions of this Section 2 of Article VII are subject to the rights of the holders of any class or series of Preferred Stock to elect directors. The provisions of this Section 2 of Article VII shall not become effective until the Company's Common Stock becomes registered under Section 12 of the Exchange Act.

SECTION 3. Stockholder Nominations and Introduction of Business. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the By-laws of the Corporation.

SECTION 4. Newly Created Directorships and Vacancies. Subject to the rights of the holders of any series of Preferred Stock, and unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal from office or other cause may be filled only by a majority vote of the directors then in office, though less than a quorum, and any director so chosen shall hold office for a term expiring at the succeeding annual meeting of stockholders and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

SECTION 5. Removal. Subject to the rights of the holders of any series of Preferred Stock, any director, or the entire Board of Directors, may be removed, with or without cause, by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that this Section 5 of Article VII shall apply, in respect of the removal without cause of a director or directors elected by the holders of a class or series of stock pursuant to this Certificate of Incorporation, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

SECTION 6. Rights and Powers. Except to the extent prohibited by law, the Board of Directors shall have the right (which, to the extent exercised, shall be exclusive) to establish the

rights, powers, duties, rules and procedures that from time to time shall govern the Board of Directors and each of its members, including, without limitation, the vote required for any action by the Board of Directors, and that from time to time shall affect the directors' power to manage the business and affairs of the Corporation; and no by-law shall be adopted by stockholders which shall impair or impede the implementation of the foregoing.

SECTION 7. By-laws. The Corporation may in its By-laws confer powers upon the Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law.

ARTICLE VIII BOOKS AND RECORDS

The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation. The Board of Directors shall from time to time decide whether and to what extent and at what times and under what conditions and requirements the accounts and books of the Corporation, or any of them, except the stock book, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any books or documents of the Corporation, except as conferred by the laws of the State of Delaware or as authorized by the Board of Directors.

ARTICLE IX STOCKHOLDER ACTION

Meetings of stockholders may be held within or without the State of Delaware as the By-laws of the Corporation may provide. Subject to the rights of the holders of any series of Preferred Stock, for so long as either the Corporation's Common Stock is registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Corporation is required to file periodic reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Exchange Act with respect to the Corporation's Common Stock, (A) any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected in lieu thereof by any consent in writing by such stockholders unless the action to be effected by written consent of the stockholders and the taking of such action by written consent have been approved in advance by a resolution adopted by the Board of Directors, and (B) special meetings of stockholders of the Corporation may be called only by the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary pursuant to a resolution adopted by a majority of the directors then in office, or by stockholders holding at least a majority of the issued and outstanding voting stock of the Corporation.

**ARTICLE X
STOCKHOLDER VOTE REQUIRED**

Sections 2, 3, 4 and 5 of Article III, as well as Article V and Article VIII, of the By-laws of the Corporation shall not be altered, amended or repealed by, and no provision inconsistent therewith shall be adopted by, the stockholders without the affirmative vote of the holders of at least a majority of the issued and outstanding voting stock of the Corporation entitled to vote generally for the election of directors at a meeting of stockholders at which a quorum is present (as provided in the By-laws of the Corporation).

**ARTICLE XI
INDEMNIFICATION**

SECTION 1. Each person who is or was a director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted from time to time by the DGCL as the same exists or may hereafter be amended (but, if permitted by applicable law, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) or any other applicable laws as presently or hereafter in effect. The indemnification rights and protections existing hereunder shall be a contract right and shall be provided to each person who is or was a director or officer of the Corporation at any time this Article XI is or was in effect, regardless of whether or not such person continues to serve in his or her capacity as a director or officer of the Corporation at the time such indemnification rights and protections are sought. The Corporation may, by action of the Board of Directors, provide indemnification to employees and agents (other than a director or officer) of the Corporation, to directors, officers, employees or agents of a subsidiary of the Corporation, and to each person serving as a director, officer, partner, member, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, at the request of the Corporation, with the same scope and effect as the foregoing indemnification of directors and officers of the Corporation. The Corporation shall be required to indemnify any person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors or is a proceeding to enforce such person's claim to indemnification pursuant to the rights granted by this Certificate of Incorporation or otherwise by the Corporation. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater or different than that provided in this Article XI. Any amendment or repeal of this Article XI shall not adversely affect any right or protection existing hereunder in respect of any act, omission, fact or circumstance occurring prior to such amendment or repeal.

SECTION 2. By action of its Board of Directors, notwithstanding any interest of the directors in the action, the Corporation may purchase and maintain insurance, in such amounts as the Board of Directors deems appropriate, to protect any director, officer, employee and agent of the Corporation, any director, officer, employee or agent of a subsidiary of the Corporation, and any person serving as a director, officer, partner, member, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise

(including, without limitation, any employee benefit plan) against any liability asserted against such person or incurred by such person in any such capacity or arising out of the person's status as such (including, without limitation, expenses, judgments, fines and amounts paid in settlement) to the fullest extent permitted by the DGCL as it exists on the date hereof or as it may hereafter be amended, and whether or not the Corporation would have the power or would be required to indemnify any such person under the terms of any agreement or by-law or the DGCL. For purposes of this Article XI, "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan.

SECTION 3. If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each person entitled to indemnification under the first paragraph of this Article XI as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification is available to such person pursuant to this Article XI to the fullest extent permitted by any applicable portion of this Article XI that shall not have been invalidated and to the fullest extent permitted by applicable law.

SECTION 4. Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director, officer or employee of the Corporation existing at the time of such repeal or modification.

ARTICLE XII DIRECTOR LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL or (4) for any transaction from which the director derived an improper personal benefit. Any amendment or repeal of this Article XII shall not adversely affect any right or protection of a director of the Corporation existing hereunder in respect of any act, omission, fact or circumstance occurring prior to such amendment or repeal.

If the DGCL shall be amended to authorize corporate action further eliminating or limiting the liability of directors, then a director of the Corporation, in addition to the circumstances in which he is not liable immediately prior to such amendment, shall be free of liability to the fullest extent permitted by the DGCL, as so amended.

ARTICLE XIII BUSINESS COMBINATIONS

The Corporation expressly elects not to be governed by Section 203 of the DGCL.

**ARTICLE XIV
AMENDMENTS**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in effect from time to time in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

**ARTICLE XV
INCORPORATOR**

The name and mailing address of the incorporator are as follows:

Bruce M. Rodgers, Esq.
301 W. Platt St., #375
Tampa, Florida 33606

I, The Undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 20th day of April, A.D. 2015.

By:	<u> /s/ Bruce M. Rodgers </u> (Incorporator)
Name:	<u> BRUCE M. RODGERS </u> (type or print)

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
LM FUNDING AMERICA, INC.**

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is LM Funding America, Inc..

2. The certificate of incorporation of the Corporation is hereby amended by striking out SECTION 1 of ARTICLE IV thereof and by substituting in lieu of said Section the following new SECTION 1 of ARTICLE IV:

SECTION 1. The aggregate number of shares of all classes of capital stock which the Corporation shall have the authority to issue is Fifteen Million (15,000,000) shares, consisting of Five Million (5,000,000) shares of preferred stock, par value \$0.001 per share (the "Preferred Stock") and Ten Million (10,000,000) shares of common stock, par value \$0.001 per share (the "Common Stock").

3. The amendment of the Certificate of Incorporation herein certified has been duly adopted and authorized by resolution of the board of directors of the Corporation and by the written consent without a meeting of the stockholders of the Corporation in accordance with the provision of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned authorized officer of the Corporation, has executed this Certificate of Amendment this 7th day of August, 2015.

LM FUNDING AMERICA, INC.

/s/ Bruce M. Rodgers

Bruce M. Rodgers, Chief Executive Officer

**CERTIFICATE OF AMENDMENT TO THE
CERTIFICATE OF INCORPORATION OF
LM FUNDING AMERICA, INC.**

LM Funding America, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies that:

1. The name of the Corporation is LM Funding America, Inc. The date of filing of the Corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was April 20, 2015, as amended on August 7, 2015.

2. This Certificate of Amendment to the Certificate of Incorporation was duly authorized and adopted by the Corporation's Board of Directors and stockholders in accordance with Section 242 of the General Corporation Law of the State of Delaware and amends the provisions of the Company's Certificate of Incorporation, as amended.

3. The amendment to the existing Certificate of Incorporation being effected hereby is as follows:

a. Delete Section 1 of Article IV in its entirety and to substitute in its place the following:

"SECTION 1. The aggregate number of shares of all classes of capital stock which the Corporation shall have the authority to issue is Thirty-Five Million (35,000,000) shares, consisting of Five Million (5,000,000) shares of preferred stock, par value \$0.001 per share (the "Preferred Stock") and Thirty Million (30,000,000) shares of common stock, par value \$0.001 per share (the "Common Stock")."

3. The amendment of the Certificate of Incorporation herein certified has been duly adopted and authorized by resolution of the board of directors of the Corporation and by the written consent without a meeting of the stockholders of the Corporation in accordance with the provision of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned authorized officer of the Corporation, has executed this Certificate of Amendment this 4th day of September, 2018.

LM FUNDING AMERICA, INC.

/s/ Bruce M. Rodgers

Bruce M. Rodgers, Chief Executive Officer

**STATE OF DELAWARE
CERTIFICATE OF CORRECTION**

LM Funding America, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware.

DOES HEREBY CERTIFY:

1. The name of the corporation is LM Funding America, Inc. (the "Corporation").
2. That a Certificate of Amendment to the Certificate of Incorporation was filed by the Secretary of State of Delaware on September 5, 2018, and that said Certificate of Amendment requires correction as permitted by Section 103 of the General Corporation Law of the State of Delaware.
3. The inaccuracy or defect of said Certificate of Amendment is:

Due to clerical error, the word "shall" was inadvertently misspelled as "shale" in the amendment set forth in paragraph 3 of such Certificate Amendment.
4. The Certificate of Amendment is corrected to read as follows:
 - a. Delete Section 1 of Article IV in its entirety and to substitute in its place the following:

"SECTION 1. The aggregate number of shares of all classes of capital stock which the Corporation shall have the authority to issue is Thirty-Five Million (35,000,000) shares, consisting of Five Million (5,000,000) shares of preferred stock, par value \$0.001 per share (the "Preferred Stock") and Thirty Million (30,000,000) shares of common stock, par value \$0.001 per share (the "Common Stock")."

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Correction to be executed this 7th day of September, 2018.

By: /s/ Bruce M. Rodgers
Bruce M. Rodgers, Chief Executive Officer

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
LM FUNDING AMERICA, INC.**

LM Funding America, Inc. (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies that:

1. The name of the Corporation is LM Funding America, Inc. The date of filing of the Corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was April 20, 2015, as amended on August 7, 2015 (the "Original Certificate").

2. This Certificate of Amendment to the Certificate of Incorporation of the Corporation (this "Amendment") was duly authorized and adopted by the Corporation's Board of Directors and stockholders in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware ("DGCL").

3. The amendment to the existing Certificate of Incorporation being effected hereby is as follows: Article "FOURTH" of the Original Certificate shall be and is hereby amended by adding the following paragraphs to the end thereof as a new Article IV, Section 3:

"Reverse Stock Split. Without regard to any other provision of this Certificate of Incorporation, effective at 12:01 a.m., eastern time, on Tuesday, October 16, 2018 (the "Effective Time"), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that each ten (10) shares of issued Common Stock immediately prior to the Effective Time is reclassified into one (1) share of Common Stock. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, upon surrender after the Effective Time of a certificate which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the reclassification, following the Effective Time, shall be entitled to receive a cash payment equal to the product of the closing sales price of the Common Stock on the Nasdaq Capital Market on October 15, 2018 and the amount of the fractional share. Each certificate that immediately prior to the Effective Time represented shares of Common Stock ("Old Certificates"), shall thereafter represent that number of shares of Common Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the treatment of fractional shares as described above."

4. Except as specifically set forth herein, the remainder of the Original Certificate will not be amended, modified or otherwise altered.

5. The effective time and date of the amendment herein certified shall be 12:01 a.m., October 16, 2018.

[signature page follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Certificate of Incorporation to be executed by the undersigned duly authorized officer of the Corporation this 12

th day of October, 2018.

LM FUNDING AMERICA, INC.

By: /s/ Bruce Rodgers

Name: Bruce Rodgers

Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
LM FUNDING AMERICA, INC.**

LM Funding America, Inc. (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies that:

2. The name of the Corporation is LM Funding America, Inc. The date of filing of the Corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was April 20, 2015, as amended on August 7, 2015, September 5, 2018, and October 15, 2018.
3. This Certificate of Amendment to the Certificate of Incorporation was duly authorized and adopted by the Corporation's Board of Directors and stockholders in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware and amends the provisions of the Company's Certificate of Incorporation, as amended.
4. The amendment to the existing Certificate of Incorporation being effected hereby is as follows: Article IV of the Certificate of Incorporation, as amended, shall be and is hereby amended by adding the following paragraph to the end thereof as a new Article IV, Section 4:

“SECTION 4. *Reverse Stock Split*. Without regard to any other provision of this Certificate of Incorporation, effective at 12:01 a.m., eastern time, on May 7, 2021 (the “Effective Time”), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that each five (5) shares of issued Common Stock immediately prior to the Effective Time is reclassified into one (1) share of Common Stock. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, upon surrender after the Effective Time of a certificate which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the reclassification, following the Effective Time, shall be entitled to receive a cash payment equal to the product of the closing sales price of the Common Stock on the Nasdaq Capital Market on May 6, 2021 and the amount of the fractional share. Each certificate that immediately prior to the Effective Time represented shares of Common Stock (“Old Certificates”), shall thereafter represent that number of shares of Common

Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the treatment of fractional shares as described above."

5. Except as specifically set forth herein, the remainder of the Certificate of Incorporation will not be amended, modified or otherwise altered.

[signature page follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Certificate of Incorporation to be executed by the undersigned duly authorized officer of the Corporation this 5th day of

May, 2021.

LM FUNDING AMERICA, INC.

By: /s/ Bruce Rodgers

Name: Bruce Rodgers

Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT TO THE
CERTIFICATE OF INCORPORATION OF
LM FUNDING AMERICA, INC.**

LM Funding America, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies that:

1. The name of the Corporation is LM Funding America, Inc. The date of filing of the Corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was April 20, 2015, as amended on August 7, 2015, September 5, 2018, October 15, 2018, and May 5, 2021.

2. This Certificate of Amendment to the Certificate of Incorporation was duly authorized and adopted by the Corporation's Board of Directors and stockholders in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware and amends the provisions of the Company's Certificate of Incorporation, as amended.

3. The amendment to the existing Certificate of Incorporation, as amended, being effected hereby is as follows: Delete Section 1 of Article IV in its entirety and substitute in its place the following:

“SECTION 1. The aggregate number of shares of all classes of capital stock which the Corporate shall have the authority to issue is five hundred million (500,000,000) shares, consisting of one hundred fifty million (150,000,000) shares of preferred stock, par value \$0.001 per share (“Preferred Stock”) and three hundred fifty million (350,000,000) shares of common stock, par value \$0.001 per share (“Common Stock”).”

4. The amendment of the Certificate of Incorporation herein certified has been duly adopted and authorized by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

5. Except as specifically set forth herein, the remainder of the Certificate of Incorporation will not be amended, modified or otherwise altered.

Executed effective as of this 27th day of December, 2021

LM FUNDING AMERICA, INC.

By: /s/ Bruce M. Rodgers

Bruce M. Rodgers

Chief Executive Officer and Chairman of the Board

January 24, 2022

Exhibit 5.1

LM Funding America, Inc.
1200 West Platt Street, Suite
100
Tampa, Florida 33606

Re: LM Funding America, Inc. 2021 Omnibus Incentive Plan

Ladies and Gentlemen:

We have acted as counsel for LM Funding America, Inc., a Delaware corporation (the “Company”), in connection with the preparation of a Registration Statement on Form S-8 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), relating to 5,000,000 shares of common stock, par value \$0.001 per share, of the Company, (the “Shares”) that may be issued pursuant to the LM Funding America, Inc. 2021 Omnibus Incentive Plan (the “Plan”).

In connection with our representation, we have examined: (i) the Plan; (ii) the Registration Statement; (iii) Certificate of Incorporation of the Company, as amended (the “Charter”); (iv) the Restated By-laws of the Company; (v) resolutions of the Board of Directors of the Company relating to the Plan and the issuance of the Shares thereunder; and (vi) such other documents and records as we have deemed necessary to enable us to render this opinion. In our examination of the above-referenced documents, we have assumed the genuineness of all signatures, the authenticity of all documents, certificates, and instruments submitted to us as originals and the conformity with the originals of all documents submitted to us as copies. We have also assumed the due execution and delivery of all documents where due execution and delivery are prerequisite to the effectiveness thereof.

We express no opinion herein as to the laws of any state or jurisdiction other than the the General Corporation Law of the State of Delaware and the federal laws of the United States of America. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the prospectus that forms a part thereof, other than as expressly stated herein with respect to the issuance of the Shares.

Based upon and subject to the foregoing, we are of the opinion that the Shares covered by the Registration Statement, when issued and paid for pursuant to the terms and conditions of the Plan, and as contemplated by the Registration Statement, will be validly issued, fully paid and nonassessable.

We hereby consent to the use of this opinion letter as an exhibit to the Registration Statement and to the reference to our firm in the Registration Statement. In giving our consent, we

AUSTIN	DETROIT	MEXICO CITY	SACRAMENTO	TAMPA
BOSTON	HOUSTON	MIAMI	SAN DIEGO	WASHINGTON, D.C.
CHICAGO	JACKSONVILLE	MILWAUKEE	SAN FRANCISCO	BRUSSELS
DALLAS	LOS ANGELES	NEW YORK	SILICON VALLEY	TOKYO
DENVER	MADISON	ORLANDO	TALLAHASSEE	

January 24, 2022
Page

do not admit that we are “experts” within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required by Section 7 of the Securities Act.

Very truly yours,

/s/ Foley & Lardner LLP
FOLEY & LARDNER LLP

4856-7561-7034.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 31, 2021 with respect to the audited consolidated financial statements of LM Funding America, Inc, and its subsidiaries (collectively, the "Company") for the years ended December 31, 2020 and 2019.

We also consent to the references to us under the heading "Experts" in such Registration Statement.

/s/ MaloneBailey, LLP
www.malonebailey.com
Houston, Texas
January 24, 2022