

Section 1: S-8

As filed with the U.S. Securities and Exchange Commission on June 29, 2018

Registration No. 333-

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

DRIVE SHACK INC.

(Exact name of registrant as specified in its charter)

Maryland
*(State or other jurisdiction of
incorporation or organization)*

81-0559116
*(I.R.S. Employer
Identification No.)*

**111 W. 19th Street. 8th Floor
New York, New York 10011**
(Address of principal executive offices)

DRIVE SHACK INC. 2018 OMNIBUS INCENTIVE PLAN

(Full title of the plan)

**Lawrence A. Goodfield, Jr.
Chief Financial Officer
Drive Shack Inc.
111 W. 19th Street 8th Floor
New York, New York 10011
(516) 268-7460**

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

Copy to:

**Joseph A. Coco, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000**

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
Non-accelerated filer (Do not check if a smaller reporting company)

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 \$0.01 per share | 6,697,710 shares | \$7.72 | \$51,706,321.20 | \$6,437.44 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, (the “Securities Act”), this Registration Statement also covers an indeterminate number of shares that may become issuable under the above-named plan by reason of certain corporate transactions or events, including any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration that results in an increase in the number of the registrant’s outstanding common stock.
- (2) Estimated pursuant to Rules 457(c) and (h) under the Securities Act, solely for the purpose of calculating the registration fee and based upon the average of the high and low prices of the registrant’s common stock, as reported on the New York Stock Exchange on June 27, 2018.
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PART I
INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The documents containing the information specified in Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). Such documents need not be filed with the U.S. Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

In this Registration Statement, unless otherwise specified or the context requires otherwise, we use the terms the "Company," "registrant," "we," "us" and "our" to refer to Drive Shack Inc. and its subsidiaries.

Item 3. Incorporation of Documents by Reference.

The Company hereby incorporates by reference into this Registration Statement the following documents of the Registrant under File No. 001-31458 (except for the portions of Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof or otherwise not filed with the Commission, which are deemed not to be incorporated by reference into this Registration Statement):

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed on March 14, 2018;
- (b) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018, filed on May 4, 2018;
- (c) The portions of our Definitive Proxy Statement on Schedule 14A, filed on April 13, 2018, that are incorporated by reference into Part III of our Annual Report on Form 10-K for the year ended December 31, 2017;
- (d) Our Current Reports on Form 8-K filed on March 7, 2018, May 3, 2018 and June 1, 2018; and
- (e) The description of the common stock contained in the Company's Registration Statement on Form 8-A filed on September 25, 2002, including any amendment or report 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 Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein, or in any other subsequently filed document that also is or is deemed to be incorporated herein by reference, modifies or supersedes such prior statement. Any statement contained in this Registration Statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action. The Company's charter contains such a provision which eliminates directors' and officers' liability to the maximum extent permitted by Maryland law.

The charter authorizes the Company, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while a director of the Company and at the request of the Company, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as a present or former director or officer of the Company and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. The Bylaws obligate the Company, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while a director of the Company and at the request of the Company, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made a party to the proceeding by reason of his or her service in that capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as a present or former director or officer of the Company and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. The charter and the bylaws also permit the Company to indemnify and advance expenses to any person who served a predecessor of the Company in any of the capacities described above and any employee or agent of the Company or a predecessor of the Company.

Maryland law requires a corporation (unless its charter provides otherwise, which the Company's charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity or in the defense of any claim, issue or matter in any such proceeding. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under Maryland law, a Maryland corporation may not indemnify or advance expenses for a suit brought by a director against the corporation except for a proceeding brought to enforce indemnification by this section or if the charter or bylaws of the corporation, a resolution of the board of directors of the corporation or an agreement approved by the board of directors to which the corporation is a party expressly provides otherwise. Further, a director may not be indemnified in respect of any proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged to be liable on the basis that personal benefit was improperly received, unless a court orders indemnification and then only for expenses.

Maryland also law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Insofar as indemnification for liabilities arising under 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 Commission 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.

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| <u>4.1</u> | <u>Articles of Restatement (incorporated by reference to the Company's Current Report on Form 8-K, Exhibit 3.2, filed on December 8, 2016).</u> |
| <u>4.2</u> | <u>Amended and Restated By-laws (incorporated by reference to the Company's Current Report on Form 8-K, Exhibit 3.4, filed on December 8, 2016).</u> |
| <u>4.3</u> | <u>Form of Certificate for Common Stock (incorporated by reference to the Company's Registration Statement on Form S-11, Exhibit 4.1, filed on June 14, 2002).</u> |
| <u>5.1</u> | <u>Opinion of Morrison & Foerster LLP as to legality.</u> |
| <u>23.1</u> | <u>Consent of Ernst & Young LLP, independent registered accounting firm.</u> |
| <u>23.2</u> | <u>Consent of Morrison & Foerster LLP (included in Exhibit 5.1).</u> |
| <u>24.1</u> | Power of Attorney (included on the signature pages hereto). |
| <u>99.1</u> | <u>Drive Shack Inc. 2018 Omnibus Incentive Plan (incorporated by reference to Annex A of the Company's definitive proxy statement for the 2018 annual meeting of stockholders filed on April 13, 2018).</u> |

Item 9. Undertakings.

(a) The undersigned registrant 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;

(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) of this section 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 registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the 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 therein, 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 registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable,

each filing of an employee benefit plan's annual report pursuant to 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 therein, 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 registrant pursuant to the foregoing provisions, or otherwise, the registrant 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 registrant of expenses incurred or paid by a director, officer or controlling person of the registrant 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 registrant 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 City of New York, State of New York, on June 29, 2018.

DRIVE SHACK INC.

By: /s/ Sarah L. Watterson
Name: Sarah L. Watterson
Title: Chief Executive Officer and President

POWER OF ATTORNEY

Each of the undersigned officers and directors of Drive Shack Inc., a Maryland corporation, hereby constitutes and appoints Sarah L. Watterson, Lawrence A. Goodfield, Jr. and Sara A. Yakin and each of them, severally, as his or her attorney-in-fact and agent, with full power of substitution and resubstitution and in his or her name, place and stead, in any and all capacities to sign any and all amendments (including post-effective amendments) and exhibits to this Registration Statement, and to file the same, with any and all applications and other documents relating thereto, with the U.S. Securities and Exchange Commission, with full power and authority to perform and do any and all acts and things whatsoever which any such attorney or substitute may deem necessary or advisable to be performed or done in connection with any or all of the above-described matters, as fully as each of the undersigned could do if personally present and acting, hereby ratifying and approving all acts of any such attorney or substitute.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|---------------|
| <u>/s/ Sarah L. Watterson</u> Sarah L. Watterson | Chief Executive Officer and President | June 29, 2018 |
| <u>/s/ Lawrence A. Goodfield, Jr.</u> Lawrence A. Goodfield, Jr. | Chief Financial Officer, Chief Accounting Officer and Treasurer | June 29, 2018 |
| <u>/s/ Wesley R. Edens</u> Wesley R. Edens | Chairman of the Board of Directors | June 29, 2018 |
| * William J. Clifford | Director | |
| <u>/s/ Kevin J. Finnerty</u> Kevin J. Finnerty | Director | June 29, 2018 |
| <u>/s/ Stuart A. McFarland</u> Stuart A. McFarland | Director | June 29, 2018 |
| <u>/s/ Clifford Press</u> Clifford Press | Director | June 29, 2018 |

* Did not sign

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Section 2: EX-5.1 (EXHIBIT 5.1 - OPINION)

Exhibit 5.1

Writer's Direct Contact
+1 (212) 468.8022
TBaciagalupo@mofo.com

June 29, 2018

DRIVE SHACK INC.
111 W. 19th Street, 8th Floor
New York, New York 10011

Re: Registration Statement on Form S-8 (Drive Shack Inc. 2018 Omnibus Incentive Plan)

Ladies and Gentlemen:

We serve as special Maryland counsel to Drive Shack Inc., a Maryland corporation (the "Company"), in connection with the registration under the Securities Act of 1933, as amended (the "Act"), of the sale and issuance of 6,697,710 shares (the "Shares") of Common Stock, \$0.01 par value per share, of the Company ("Common Stock") under the Drive Shack Inc. 2018 Omnibus Incentive Plan (the "Plan"), covered by the Registration Statement on Form S-8 filed by the Company with the Securities and Exchange Commission (the "Commission") on the date hereof (the "Registration Statement").

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"):

1. The Registration Statement in the form transmitted to the Commission for filing under the Act;
 2. The charter of the Company (the "Charter"), certified as of a recent date by the State Department of Assessments and Taxation of Maryland (the "SDAT");
 3. The bylaws of the Company (the "Bylaws"), certified as of the date hereof by the Secretary of the Company;
 4. Resolutions adopted by the Board of Directors of the Company (the "Resolutions") relating to (a) the registration, sale and issuance of the Shares and (b) the approval of the Plan, certified as of the date hereof by the Secretary of the Company;
 5. The Plan, certified as of the date hereof by the Secretary of the Company;
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6. A certificate of the SDAT as to the good standing of the Company, dated as of the date hereof; and
7. A certificate executed by an officer of the Company, dated as of the date hereof.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
 2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
 3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations (including the Company's) set forth therein are legal, valid and binding.
 4. All Documents submitted to us as originals are authentic. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all such Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All statements and information contained in the Documents are true and complete. There has been no oral or written modification or amendment to the Documents, or waiver of any provision of the Documents, by action or omission of the parties or otherwise.
 5. The Company does not intend to issue certificates representing the Shares. The Company will send in writing to each stockholder of the Company the information required by the Charter and the Bylaws and the information as contemplated by Section 2-210(c) of the Maryland General Corporation Law for any such shares to be issued, on request by a stockholder of the Company.
 6. Prior to the issuance of any of the Shares, the Company will have available for issuance, under the Charter, the requisite number of authorized but unissued shares of Common Stock.
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Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The Shares have been duly authorized and, when issued and delivered in accordance with the Charter, the Resolutions, the Plan and the applicable grant agreements utilized under the Plan, will be validly issued, fully paid and nonassessable.

The foregoing opinions are limited to the substantive laws of the State of Maryland and we do not express any opinion herein concerning any other law. We express no opinion as to compliance with the securities (or "blue sky") laws of the State of Maryland. The opinions expressed herein are subject to the effect of judicial decisions which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

We assume no obligation to supplement this opinion letter if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinions expressed herein after the date hereof.

This opinion is being furnished to you at your request for submission to the Commission as an exhibit to the Registration Statement.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Act.

Very truly yours,

MORRISON & FOERSTER LLP

/s/ Morrison & Foerster LLP

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Section 3: EX-23.1 (EXHIBIT 23.1 - CONSENT)

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-XXXXX) pertaining to the Drive Shack Inc. 2018 Omnibus Incentive Plan of our reports dated March 13, 2018, with respect to the consolidated financial statements of Drive Shack Inc. and the effectiveness of internal control over financial reporting of Drive Shack Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2017, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

New York, New York

June 29, 2018

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