
Section 1: 8-K (8-K)

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

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): September 24, 2020

Drive Shack Inc.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation)

001-31458

(Commission File Number)

81-0559116

(IRS Employer Identification No.)

218 W 18th St, 3rd Fl.
New York, New York

(Address of principal executive offices)

10011

(Zip Code)

Registrant's telephone number, including area code (646) 585-5591

N/A

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR Sec.230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 Sec.240.12b-2).

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 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	DS	New York Stock Exchange (NYSE)
9.75% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DS-PB	New York Stock Exchange (NYSE)
8.05% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DS-PC	New York Stock Exchange (NYSE)
8.375% Series D Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DS-PD	New York Stock Exchange (NYSE)

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On September 24, 2020, Drive Shack Inc. (the “Company”) announced the appointment of Mr. Michael Nichols, age 53, as Chief Financial Officer of the Company, effective September 28, 2020 (the “Effective Date”). Lawrence A. Goodfield Jr. will cease to serve as the Company’s interim Chief Financial Officer as of the Effective Date, but will continue to serve as the Company’s Chief Accounting Officer and Treasurer.

Michael Nichols brings over 25 years of diversified global leadership experience in accounting, financial reporting and treasury spanning several industries throughout his career. Mr. Nichols most recently served as Chief Financial Officer since 2018 for Wilks Brothers, a diversified investor in energy, transportation, natural resources and financial services businesses. He also previously served in senior-level finance and accounting roles with both Fischer & Company, a national commercial real estate and real estate technology firm specializing in tenant representation, from 2017 to 2018, and GameStop Corp, from 2005 to 2017.

There is no arrangement, understanding or family relationship between Mr. Nichols and any other person pursuant to which he was appointed as an officer of the Company. Mr. Nichols has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

In connection with his appointment, the Company entered into a customary indemnification agreement with Mr. Nichols on September 28, 2020.

On September 27, 2020, Mr. Nichols entered into an offer letter with the Company that sets forth the terms and conditions of his employment with the Company as its Chief Financial Officer. The offer letter provides that Mr. Nichols will receive an annual base salary of \$350,000 and is eligible to participate in an annual cash incentive bonus plan with an annual target amount equal to 50% of his base salary. Any bonus in respect of Mr. Nichols’ first year of employment will be prorated for the number of full months worked during such year. The offer letter further provides for participation in the Company’s benefit plans.

The offer letter provides that Mr. Nichols’ equity bonus target under the Company’s 2018 Omnibus Equity Plan will be considered and determined by the Compensation Committee of the Board of Directors of the Company, in consultation with the Chief Executive Officer of the Company, following Mr. Nichols’ start date with the Company.

The offer letter also provides that Mr. Nichols will be subject to certain non-competition and non-solicitation restrictions for 12 months following the termination of his employment for any reason, along with other standard perpetual covenants regarding confidentiality, intellectual property and related matters.

The foregoing description of the terms of the offer letter with Mr. Nichols is a summary of certain of its terms only and is qualified in its entirety by the full text of the offer letter filed as Exhibit 10.1 hereto and incorporated herein by reference.

A copy of the Company’s press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

[10.1](#) Offer Letter, dated September 27, 2020.

[99.1](#) Press Release, dated September 24, 2020.

104 Cover Page Interactive Data File (formatted as Inline XBRL).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DRIVE SHACK INC.
(Registrant)

/s/ Nicholas M. Foley

Secretary

Date: September 28, 2020

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Section 2: EX-10.1 (EXHIBIT 10.1)

Exhibit 10.1

Drive Shack Inc.
218 W. 18th St., Third Floor
New York, NY 10014

September 27, 2020

Michael Nichols

Dear Michael:

We are delighted at the prospect that you will be joining Drive Shack Inc. (the "Company") as Chief Financial Officer. Your primary place of employment will be located at the Company's office in Dallas, TX. You understand and agree that the Company's business is nationwide and in performing your duties hereunder for the Company, you will be required to travel to the Company's other business locations. You will devote your full working time to the Company. This letter confirms our offer of employment to you with an anticipated hire date to be mutually agreed following your review of this offer letter (the "Hire Date").

Your base salary will be \$350,000.00 per annum, payable bi-weekly in accordance with the Company's normal payroll practices, to compensate you for all hours you worked during the preceding pay period, regardless of whether more or less than 40 in a regularly scheduled workweek. This salary, and the Company's payroll practices and schedule, are each subject to review and possible adjustment in the Company's discretion periodically.

As part of your employment and for the role you will be fulfilling, you will be eligible to receive an annual cash bonus targeted at 50% of your base annual salary. Your equity bonus target under the Company's 2018 Omnibus Equity Plan will be considered and determined by the Compensation Committee of the Board of Directors of the Company, in consultation with the Chief Executive Officer of the Company, following your Hire Date. Bonuses are awarded in the Company's sole discretion, are not guaranteed, and are determined after an evaluation of the Company's performance as well as your own performance for the period reviewed. Payment of a bonus for one year does not guarantee payment in any subsequent year. Any bonus in respect of your first year of employment will be prorated for the number of full months worked. Cash bonuses are typically paid no later than April 15 after the calendar year for which they are awarded, and only employees who remain on the Company's payroll on the date of payment are eligible. No pro-rated bonus is awarded for the final year of employment.

You hereby acknowledge and agree, without limiting the Company's rights otherwise available at law or in equity, that, to the extent permitted by law, any or all amounts or other consideration payable by any affiliate of the Company pursuant to the provisions hereof or pursuant to any other agreement with the Company or any of its affiliates, may be set-off against any or all amounts or other consideration payable by you to the Company or any of its affiliates or to the Company or any of its affiliates under any other agreement between you and the Company or any of its affiliates; provided that any such set-off does not result in a penalty under Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A").

You agree to comply fully with all the Company policies and procedures applicable to employees, as amended and implemented from time to time, including, without limitation, paid time off, tax, regulatory and compliance procedures. Such policies and procedures are, and any future modifications thereto will be made, available on the Company's payroll portal and will also be provided upon request to human resources.

You (and your spouse, registered domestic partner and/or eligible dependents, if any) shall be entitled to participate in the same manner as other similarly situated employees of the Company in any employee benefit plan that the Company has adopted or may adopt, maintain or contribute to for the benefit of such employees generally, subject to satisfying the applicable eligibility requirements. Your participation will be subject to the terms of the applicable plan documents and generally applicable Company policies. Notwithstanding the foregoing, the Company may, consistent with applicable law, prospectively modify or terminate any employee benefit plan at any time

You represent that on the Hire Date, (a) you will be free to accept employment hereunder without any contractual restrictions, express or implied, with respect to any of your prior employers, (b) you have not taken or otherwise misappropriated and you do not have in your possession or control any confidential and proprietary information belonging to any of your prior employers or connected with or derived from your services to prior employers, (c) you have returned to all prior employers any and all such confidential and proprietary information, (d) the Company has informed you that you are not to use or cause the use of such confidential or proprietary information in any manner whatsoever in connection with your employment by the Company and you agree that you will not use such information and (e) you are not currently a party to any pending or threatened litigation with any former employer or business associate.

Nothing in this letter modifies your at-will employment status. Accordingly, either you or the Company may end the employment relationship at any time and for any reason or no reason, with or without notice. Your employment with the Company shall terminate immediately in the event of your death or disability. During your employment with the Company, you will be a full-time employee thereof, will dedicate all of your working time thereto and will have no other employment and no other business ventures which are undisclosed to the Company.

Effective concurrently with the commencement of your employment, you agree to the protective covenants set forth on Exhibit A to this letter (the "Protective Covenants").

As we have discussed, this offer is subject to your satisfactory completion of the pre-employment background check, which was previously authorized by you, and all other pre-hire clearances. Without limiting the generality of the foregoing, this offer is contingent upon our verification of your right to work in the United States, as demonstrated by your completion of the Form I-9 upon hire and your submission of acceptable documents (as noted on the Form I-9) verifying your identity and work authorization within three days of your start date.

If you accept this offer of employment, please sign and date this agreement in the space provided below and return a copy to Nicholas Foley (nfoley@driveshack.com), to indicate your acceptance. We look forward to you joining the Company.

Nicholas Foley
General Counsel

I affirm my understanding of, and agreement to, the terms and conditions set forth above, and hereby accept this offer of employment:

Legal Name (Printed): _____ Signature: _____

Exhibit A to Offer Letter
Protective Covenants

You shall not, directly or indirectly, without prior written consent of the Company, at any time during your employment hereunder or for 12 months following the termination of your employment for any reason, be involved or connected in any manner (including, but not limited to, provide consultative services to, own, manage, operate, join, control, participate in, be engaged in, and/or employed by) any business, individual, partner, firm, corporation, or other entity that competes with (any such action, individually, and in the aggregate, to “compete with”), the Company anywhere in the United States of America, including, but not limited to, any such business, individual, partner, firm, corporation, or other entity engaged in the business of operating entertainment or golf venues, whether related to the game of golf, mini-golf or other form of sporting amusement, or traditional golf.

Notwithstanding anything else herein, the mere “beneficial ownership” by you, either individually or as a member of a “group” (as such terms are used in Rule 13(d) issued under the United States Securities Exchange Act of 1934, as amended from time to time) of not more than five percent of the voting stock of any public company shall not be deemed a violation of these Protective Covenants.

You further agree that you shall not, directly or indirectly, for your benefit or for the benefit of any other person (including, without limitation, an individual or entity), or knowingly assist any other person to during your employment with the Company and for 12 months thereafter, in any manner:

(a) hire or Solicit (as hereinafter defined) the employment or services of any person who provided services to the Company or any of its affiliates (collectively, the “Company Group”), as an employee, independent contractor or consultant at the time of termination of your employment with the Company, or within six months prior thereto;

(b) Solicit any person who is an employee of the Company or any member of the Company Group to apply for or accept employment with any enterprise;

(c) Accept employment or work, in any capacity (including as an employee, consultant or independent contractor), with any firm, corporation, partnership or other entity that is, directly or indirectly, owned or controlled by any Former Employee of the Company involving the provision of services that are substantially similar to the services that you provided to the Company at any time during the twelve months prior to your termination of employment with the Company;

(d) Solicit or otherwise attempt to establish any business relationship (in connection with any business in competition with the Company) with any limited partner, investor, person, firm, corporation or other entity that is, at the time of your termination of employment, or was a Client, Investor or Business Partner of the Company or any member of the Company Group; or

(e) Interfere with or damage (or attempt to interfere with or damage) any relationship between the Company and any member of the Company Group and the respective Clients, Investors, Business Partners, or employees of the foregoing entities.

For purposes of these Protective Covenants, the term “Solicit” means (a) active solicitation of any Client, Investor, or Business Partner or Company employee; (b) the provision of non-public information regarding any Client, Investor, or Business Partner or Company employee to any third party where such information could be useful to such third party in attempting to obtain business from such Client, Investor, or Business Partner or attempting to hire any such Company employee; (c) participation in any meetings, discussions, or other communications with any third party regarding any Client, Investor, or Business Partner or Company employee where the purpose or effect of such meeting, discussion or communication is to obtain business from such Client, Investor, or Business Partner or employ such Company employee; or (d) any other passive use of non-public information about any Client, Investor, or Business Partner, or Company employee which has the purpose or effect of assisting a third party to obtain business from Clients, Investors, or Business Partners, assisting a third party to hire any Company employee or causing harm to the business of the Company.

For purposes of these Protective Covenants, the term “Client,” “Investor,” or “Business Partner” shall mean (a) anyone who is or has been a client of, investor in, or business partner of any member of the Company Group during your employment; and (b) any prospective client of, investor in, or business partner to whom any member of the Company Group made a new business presentation (or similar offering of services) at any time during the one-year period immediately preceding, or two-month period immediately following, your employment termination (but only if initial discussions between any member of the Company Group and such prospective client, investor, or business partner relating to the rendering of services occurred prior to the termination date). Notwithstanding the preceding paragraph, the Protective Covenants shall not apply to Clients who are currently your clients at your current employer.

For purposes of these Protective Covenants, the term “Former Employee” shall mean anyone who was an employee of or exclusive consultant to any member of the Company Group as of, or at any time during the one-year period immediately preceding, the termination of your employment.

Any works of authorship, databases, discoveries, developments, improvements, computer programs, or other intellectual property, etc. (“Works”) that you make or conceive, or have made or conceived, solely or jointly, during the period of your employment with the Company, whether or not patentable or registerable under copyright, trademark or similar statutes, which either (a) are related to or useful in the current or anticipated business or activities of any member of the Company Group; (b) fall within your responsibilities as employed by the Company; or (c) are otherwise developed by you through the use of the confidential information, equipment, software, or other facilities or resources of any member of the Company Group or at times during which you are or have been an employee constitute “work for hire” under the United States Copyright Act, as amended. If for any reason any portion of the Works shall be deemed not to be a “work for hire,” then you hereby assign to the Company all rights, title and interest therein and shall cooperate to establish the Company’s ownership rights, including the execution of all documents necessary to establish the Company’s exclusive ownership rights.

During your employment you will gain knowledge of, or have access to, information relating to the business and affairs of the Company Group and its Clients, Investors and Business Partners (“Information”). The Information, regardless of the form in which it is recorded, transmitted, observed or expressed, or to which it may be converted or transcribed, shall include, without limitation, written and electronically stored or accessible information and data. All Information is strictly confidential and you shall not reveal to any person or entity, or use any Information at any time, except as expressly directed by the Company, or as may be required by law. Your obligation of confidentiality is of indefinite duration. You shall not distribute, alter, copy, interfere with or destroy, Information, except in accordance with the instructions of the Company. You shall use extreme caution with, and take all steps to safeguard, the confidentiality of any part of the Information that may come into your possession at any time or in any place.

Exhibit A - 2

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Section 3: EX-99.1 (EXHIBIT 99.1)

Exhibit 99.1

DRIVE SHACK

September 24, 2020

Drive Shack Announces Key Leadership Additions New Chief Financial Officer to Join Company on September 28

NEW YORK, NY, September 24, 2020 -- Drive Shack Inc. (the “Company”) (NYSE: DS) is pleased to announce the appointment of two key, highly talented and accomplished executives to its leadership team.

Michael Nichols has been named Chief Financial Officer and will join the Company on September 28, reporting to Chief Executive Officer and President, Hana Khouri. Mike brings over 25 years of diversified global leadership experience in accounting, financial reporting and treasury spanning several industries throughout his career. Mike most recently served as Chief Financial Officer for Wilks Brothers, a diversified investor in energy, transportation, natural resources and financial services businesses. Additionally, Mike has served in senior-level finance and accounting roles with both Fischer & Company, a national commercial real estate and real estate technology firm specializing in tenant

representation, and GameStop Corporation, where he served for 12 years.

“I am excited to welcome Mike to our leadership team, bringing an extensive background and years of financial expertise to this role,” stated Khouri. “Mike will be responsible for providing strategic leadership and driving operational excellence to the corporate finance and accounting organization and will work closely with me and our Board of Directors on strategic financial initiatives to best position Drive Shack for future growth and expansion. We will benefit greatly from the experience and leadership he has honed over the past 25 years,” added Khouri.

The Company is also pleased to welcome Kelley Buchhorn as Head of Investor Relations, who will join the organization on October 5, reporting directly to Khouri. Kelley is a seasoned finance leader with over 30 years of experience in the retail industry. She most recently served as Head of Investor Relations for JCPenney and has an extensive background in several strategic accounting, finance and investor relations roles with Pier 1 Imports, where she served for over 27 years.

Khouri added, “We are pleased to welcome another talented and highly experienced finance executive to the Drive Shack team. Kelley will play a meaningful role in providing oversight of all initiatives and strategies related to external communications and investor planning and outreach, ensuring the Company is strategically aligned in the investor and analyst community. We will depend on her extensive leadership and financial background as we continue to overcome the challenges posed by the COVID-19 pandemic and execute our growth plan.”

About Drive Shack

Drive Shack Inc. is a leading owner and operator of golf-related leisure and “eatertainment” businesses.

Austin Pruitt
Investor Relations
646-585-5591
IR@driveshack.com