

# **Drive Shack Inc.**

## **Part 2A of Form ADV**

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This brochure provides information about the qualifications and business practices of Drive Shack Inc. (“Drive Shack” or the “Company”), an investment adviser registered with the United States Securities and Exchange Commission (“SEC”), and its wholly owned affiliate, NIC Management LLC (“NIC”, or the “Relying Adviser”). If you have any questions about the contents of this brochure, please contact us at 202-246-6287. The information in this brochure has not been approved or verified by the SEC or by any state securities authority.

Additional information about Drive Shack and NIC is also available on the SEC’s website at: [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

REGISTRATION WITH THE SEC AS AN INVESTMENT ADVISER DOES NOT IMPLY THAT DRIVE SHACK OR ANY PRINCIPALS OR EMPLOYEES OF DRIVE SHACK POSSESS A PARTICULAR LEVEL OF SKILL OR TRAINING IN THE INVESTMENT ADVISORY OR ANY OTHER BUSINESS.

## **Item 2 - Material Changes**

There have been no material changes to this brochure since the last annual update dated March 29, 2018.

Drive Shack's complete Firm Brochure is always available upon request by contacting Nicholas Foley, Chief Compliance Officer at 202-246-6287, or by emailing [nfoley@driveshack.com](mailto:nfoley@driveshack.com).

## **Item 3 - Table of Contents**

|   |   |
|---|---|
| Item 2 - Material Changes .....   | 2 |
| Item 3 - Table of Contents .....  | 2 |
| Item 4 - Advisory Business .....  | 4 |
| Item 5 - Fees and Compensation .....                                      | 4 |
| Item 6 - Performance Based Fees and Side-by-Side Management .....         | 5 |
| Item 7 -Types of Clients .....  | 5 |
| Item 8 - Methods of Analysis, Investment Strategies and Risk of Loss..... | 5 |

|  |    |
|--|----|
| Item 9 - Disciplinary Information.....   | 6  |
| Item 10 - Other Financial Industry Activities and Affiliations .....                                 | 6  |
| Item 11 - Code of Ethics, Participation or Interest in Client Transactions and Personal Trading .... | 7  |
| Item 12 - Brokerage Practices .....  | 8  |
| Item 13 - Review of Accounts.....  | 9  |
| Item 14 - Client Referrals and Other Compensation .....  | 9  |
| Item 15 - Custody .....  | 9  |
| Item 16 - Investment Discretion .....  | 9  |
| Item 17 - Voting Client Securities.....  | 10 |
| Item 18 - Financial Information .....  | 10 |
| Item 19 – Information for State Registered Advisers.....   | 10 |

## **Item 4 - Advisory Business**

Drive Shack Inc. (“Drive Shack” or “the Company”) was formed in 2002, and changed its name from Newcastle Investment Corp on December 28, 2016. Its common stock is traded on the NYSE under the symbol “DS”. In April 2011, the Company registered with the SEC as an investment adviser. Its primary business is the ownership and operation of golf-related leisure businesses. Drive Shack and the Relying Adviser, NIC, are collateral managers for Collateralized Debt Obligations (“CDOs”). The Relying Adviser has been identified in Schedule R of Drive Shack’s Part 1A of Form ADV. Drive Shack and the Relying Adviser operate under a single code of ethics adopted in accordance with rule 204A-1 under the Advisers Act and a single set of written policies and procedures adopted and implemented in accordance with rule 206(4)-(7) under the Advisers Act that are administered by a single chief compliance officer. As used in this document, “Drive Shack” or “the Company” includes Drive Shack and the Relying Adviser, except where the context indicates otherwise. .

Drive Shack arranges for the sale of assets from the collateral accounts of the CDOs (the “Clients”), which are in the process of winding down their operations. Drive Shack’s responsibilities with respect to each CDO are set forth in the Trust Deed of the CDO, the Collateral Management Agreement, and other governing documents (the “Governing Documents”). This brochure is designed solely to provide information about Drive Shack and should not be considered to be an offer of interests in any CDO. Drive Shack’s services are provided directly to the CDOs and not individually to investors in the CDOs. Drive Shack does not participate in wrap fee programs.

The amount of regulatory assets under management that the Company advises or manages on a discretionary basis, as of December 31, 2018 is \$274,387,210. Note that this is the combined assets under management for Drive Shack and NIC.

## **Item 5 - Fees and Compensation**

Drive Shack’s fees and other compensation are set forth in the Governing Documents.

Drive Shack and NIC receive an asset based fee ranging from 0.13% - 0.20% of collateral balances under management, less any defaulted assets in the portfolio. Asset based fees are generally payable monthly or quarterly in arrears based on the total amount of collateral as the end of each month or quarter. The trustees of the CDOs pay the asset based fees according to a payment priority schedule described in the Governing Documents. The management fees may vary by CDO.

Drive Shack and NIC may receive fees for acting as auction agent for the Clients. The fees for this activity are described in the Governing Documents of the Clients.

In addition to asset based fees, investors in the CDOs bear expenses including, but not limited to, investment related expenses such as brokerage commissions (including liquidation agent transaction fees), interest on margin accounts and other indebtedness, custodial fees, bank service fees, withholding and transfer fees, transfer, income, stamp and other taxes and duties, taxes, corporate licensing fees, Trustees’ expenses as applicable, legal and auditing expenses, accounting, administration, filing fees and expenses, CDO organizational costs and wind down expenses. Drive Shack bears its own expenses, including office space and utilities, computer equipment and software and secretarial, clerical, employee related and other personnel. Not all CDOs bear the same types of expenses, and investors in the CDOs should refer to the applicable Governing Documents.

## **Item 6 - Performance Based Fees and Side-by-Side Management**

Drive Shack does not charge performance based fees.

## **Item 7 -Types of Clients**

As discussed in more detail in Item 4 above, Drive Shack's management services are limited to acting as a collateral manager for CDOs.

## **Item 8 - Methods of Analysis, Investment Strategies and Risk of Loss**

### *Methods of Analysis and Investment Strategies*

The CDOs for which Drive Shack acts as collateral manager are out of the investment period, so the services provided by Drive Shack are limited to those relating to the sale of collateral. Drive Shack monitors the assets in the collateral accounts for credit quality and other factors and determines the assets to sell based on whether an asset is in default of its terms, or if the CDO client requires an auction. An auction is conducted when all of the collateral associated with a tranche is put up for sale and can only be completed if the sale of the collateral is sufficient to repay the notes of the tranche. Unless Drive Shack is certain that the value of the collateral is sufficient to repay the notes, no auction is conducted. If it is determined that the collateral is sufficient, the auction will be conducted.

Drive Shack monitors the credit ratings and other data related to the assets in the collateral accounts, and reports on the characteristics of the collateral portfolio to the CDOs' Trustees. Based on this analysis, Drive Shack will determine whether the event of default warrants the sale of the asset from the collateral account.

### *Material Risks*

The CDOs are out of the investment period, and the assets are typically sold based on default of the terms of the particular asset. Drive Shack's investment strategies involve significant risks, including, but not limited to, the risks set forth below. The risks set out below do not purport to be exhaustive. Additional risks and uncertainties that are currently unknown or currently deemed immaterial may become material factors that affect the CDOs.

### *Fixed Income Securities*

The collateral accounts may invest in bonds or other fixed-income securities, including, without limitation, commercial paper and "higher yielding" (and, therefore, higher risk) debt securities. Such securities may be below "investment grade" and may face ongoing uncertainties and exposure to adverse business, financial or economic conditions that could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain of these lower-rated debt securities tend to reflect individual corporate developments to a greater extent than do higher-rated debt securities, which react primarily to fluctuations in the general level of interest rates, and tend to be more sensitive to economic conditions than higher-rated securities. In addition, it is likely that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and, therefore, increase the incidence of default for such securities.

### *Issuer-Specific/Counterparty and Industry Credit Risk*

The issuer, the guarantor or the insurer of a fixed income security, or the counterparty to a contract, may be unable or unwilling to make timely principal and interest payments or to otherwise honor its obligations. Additionally, securities could lose value due to a loss of confidence in the ability of the issuer, guarantor,

insurer or counterparty to pay back debt. The longer the maturity and lower the credit quality of an instrument, the more likely its value will decline as a result of such a loss of confidence. From time to time, several issuers in a given industry may experience such difficulties simultaneously, making it difficult for issuers in that industry to roll-over obligations, to repay creditors or to obtain liquidity in the market.

#### *Asset-Backed Securities*

The collateral debt securities will consist of Asset-Backed Securities, which include, without limitation, CMBS, RMBS, Consumer Asset-Backed Securities, Commercial Asset-Backed Securities and CDO Securities. "Asset-Backed Securities" are securities that entitle the holders thereof to receive payments that depend primarily on the cash flow from a specified pool of financial assets (including other asset backed securities), either fixed or revolving, that by their terms convert into cash within a finite time period, together with rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities.

Holders of Asset-Backed Securities bear various risks, including credit risks, liquidity risks, interest rate risks, market risks, operations risks, structural risks and legal risks. Credit risk is an important issue in Asset-Backed Securities because of the significant credit risks inherent in the underlying collateral and because the issuers of Asset-Backed Securities are primarily private entities. The structure of an Asset-Backed Security and the terms of the investors' interest in the collateral can vary widely depending on the type of collateral, the desires of investors and the use of credit enhancements. Although the basic elements of all Asset-Backed Securities are similar, individual transactions can differ markedly in both structure and execution. Important determinants of the risk associated with issuing or holding the securities include the process by which principal and interest payments are allocated and down-streamed to investors, how credit losses affect the issuing vehicle and the return to investors, whether collateral represents a fixed set of specific assets or accounts, whether the underlying collateral assets are revolving or closed-end, under what terms (including maturity of the asset-backed instrument) any remaining balance in the accounts may revert to the issuing company and the extent to which the company that is the actual source of the collateral assets is obligated to provide support to the issuing vehicle or to the investors.

#### *Credit Ratings*

Credit ratings of debt securities represent the rating agencies' opinions regarding their credit quality and are not a guarantee of quality. Rating agencies attempt to evaluate the safety of principal and interest payments and do not evaluate the risks of fluctuations in market value and, therefore, credit ratings may not fully reflect the true risks of an investment. Also, rating agencies may fail to make timely changes in credit ratings in response to subsequent events, so that an issuer's current financial condition may be better or worse than a rating indicates. Consequently, credit ratings of the Collateral Debt Securities will be used by Drive Shack only as a preliminary indicator of investment quality. Investments in non-investment grade and comparable unrated obligations will be more dependent on Drive Shack's credit analysis than would be the case with investments in investment-grade debt obligations.

## **Item 9 - Disciplinary Information**

Neither Drive Shack nor any of its officers, directors, or employees or other management persons has been involved in any legal or disciplinary events that would require disclosure in response to this Item.

## **Item 10 - Other Financial Industry Activities and Affiliations**

Drive Shack is the sole member of the Relying Adviser, NIC, a wholly owned subsidiary that also acts as collateral manager for separate CDOs. Drive Shack provides personnel and other support to NIC for it to provide collateral manager services.

#### *Registered Broker-Dealers*

No one at the Company is registered, or has an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.

#### *Registered Futures Commission Merchants, Commodity Pool Operators and Commodity Trading Advisors*

No one at the Company is registered, or has an application pending to register, as a registered futures commission merchant, commodity pool operator or commodity trading advisor.

#### *Material Relationships or Arrangements with Other Industry Participants*

The Company has entered into a Transition Services Agreement with FIG LLC under which FIG LLC will provide certain support services to the Company on a pay for service basis. There is no requirement for the Company to use FIG LLC for any services, and the rates for services paid to FIG LLC have been approved by the Company's board of directors.

#### *Selection or Recommendation of Other Advisers*

Drive Shack does not recommend or select other investment advisers or receive compensation from such advisers in a manner that would create a material conflict of interest. Drive Shack does not have other business relationships with other advisers that create a material conflict of interest.

## **Item 11 - Code of Ethics, Participation or Interest in Client Transactions and Personal Trading**

As an SEC registered investment adviser, Drive Shack has adopted and implemented a written Code of Ethics ("Code" or "the Code") under Rule 204A-1 of the Investment Advisers Act of 1940 ("Advisers Act") that is applicable to all employees. Drive Shack's Code describes its fiduciary duties and responsibilities to its clients, and sets forth Drive Shack's (i) policies on receipt of gifts by employees and campaign contributions and (ii) practices of reporting and monitoring the personal securities transactions of supervised persons with access to client investment recommendations. Under Drive Shack's Code, all supervised personnel have a duty to act only in the best interests of its Clients and all potential conflicts and violations of the Code must be promptly reported to Chief Compliance Officer ("CCO"). All supervised personnel must acknowledge their receipt and understanding of the terms of the Code annually, or as amended.

#### *Code of Ethics*

The Code contains policies and procedures with respect to personal securities transactions by employees and related accounts that are designed to prevent front-running, scalping, the misuse of any material non-public inside information, and other improper activities. Employees generally may not conduct personal securities transactions in the securities of any collateralized debt vehicle managed by the Company without express approval from the CCO. Employees must report all personal transactions to the CCO on at least a quarterly basis. The CCO monitors all transactions by employees in order to identify any pattern of conduct that may evidence conflicts or potential conflicts with the principles and objectives of the Code, or other inappropriate behavior.

The Code of Ethics includes policies and procedures to govern, monitor, and place limitations on political contributions made by employees or affiliates. Drive Shack also maintains policies and procedures intended to prevent employees from being unduly influenced in their decisions by the receipt of gifts or other inducements from third parties, such as trading counterparties, vendors and investors. To do so, Drive Shack's Code requires the preclearance of gifts and entertainment above certain values. The Code also

requires the disclosure of potential conflicts of interest arising from the prior employment or outside business activity of employees.

#### *Participation or Interest in Client Transactions*

Drive Shack, its employees and affiliates (collectively, “Related Persons”) do not have interests in the Clients.

#### *Statement on Insider Trading*

Drive Shack and/or its employees may, from time to time, come into possession of material non-public or other confidential information which, if disclosed, might affect an investor’s decision to buy, sell, or hold a security. Under applicable law, Drive Shack and its employees may be prohibited from improperly disclosing or using such information for their personal benefit or for the benefit of any other third party. Accordingly, should Drive Shack and/or its employees come into possession of material non-public or other confidential information with respect to any company, they may be prohibited from communicating such information to, or using such information for the benefit of, Drive Shack’s Clients and their underlying investors. Drive Shack has adopted a Statement on Insider Trading (“Insider Trading Policy”) in accordance with Section 204A under the Advisers Act, which establishes procedures to prevent the misuse of material non-public information by Drive Shack and its employees.

A copy of Drive Shack’s Code of Ethics is available upon request by contacting Nicholas Foley at [nfoley@driveshack.com](mailto:nfoley@driveshack.com).

#### *Statement on Principal and Cross Trades*

Section 206(3) of the Advisers Act makes it unlawful for any investment adviser, directly or indirectly, acting as principal for its own account, knowingly to sell any security to or purchase any security from a Client without disclosing to the Client in writing the capacity in which the adviser is acting and obtaining the Client’s consent to the transaction. Should Drive Shack decide to engage in a principal transaction with a Client, it will affect the transaction in compliance with Section 206(3) of the Advisers Act.

## **Item 12 - Brokerage Practices**

#### *Selection of Broker-Dealers*

Drive Shack has discretionary authority to determine what securities are sold, as well as the broker-dealer(s) that will effect those transactions for Clients. Drive Shack uses a Broker-Dealer as a third party adviser as liquidation agent for the sale of securities. The role of the liquidation agent is to secure competitive bids for securities that Drive Shack has determined to sell. Drive Shack determines the executing broker based upon the best price and liquidity, and the liquidation agent receives a fee of 3/32 of the face value of the securities sold which is in addition to transaction-related fees such as mark-ups or mark-downs to executing brokers.

Drive Shack does not receive research or other soft dollar benefits from brokers. Drive Shack does not receive client referrals from brokers. Drive Shack’s clients do not direct trades through any particular counterparty, although the Company uses the services of one liquidation agent as mentioned previously and does not anticipate adding additional liquidation agents.

#### *Order Aggregation*

Drive Shack does not aggregate orders.

#### *Trade Errors*

Drive Shack has a trade error policy that requires, among other things, that trade errors are to be corrected by Drive Shack as soon as practicable and promptly reported to the CCO. In the event that a trade error is



deemed a result of Drive Shack's bad faith, willful misconduct or gross negligence, or reckless disregard of its duties under the collateral management agreements, Drive Shack will correct the error in a manner such that the Client incurs no loss. Trade errors that result from reasons other than by breach of the standard of care stated in the previous sentence will be borne by the relevant Client. Drive Shack has a conflict of interest in determining whether an error has occurred or was caused as a result of fraud, gross negligence, or willful misconduct. Broker-dealers may not assume responsibility for trade error losses caused by Drive Shack.

## **Item 13 - Review of Accounts**

### *Review of Client Accounts*

Drive Shack will conduct monthly and quarterly reviews of the value of the collateral accounts, and will perform reconciliation of cash collections and payments against the payment priority schedule in the Governing Documents. A review of the collateral of a CDO may also be triggered by any unusual activity or special circumstance identified by Drive Shack.

### *Reports to Clients*

Drive Shack provides monthly reports of positions held in the collateral accounts to the Trustees of the CDOs.

### *Valuation of Client Assets*

Drive Shack will provide valuations of the securities in the collateral accounts to the CDO Trustees. Drive Shack relies on third-party pricing services and broker quotes to assess the market value of the positions.

## **Item 14 - Client Referrals and Other Compensation**

Drive Shack has no arrangements in place with third parties for client referrals.

## **Item 15 - Custody**

Drive Shack does not have custody of Client assets.

## **Item 16 - Investment Discretion**

Subject to the investment objectives, policies, and restrictions of each CDO as set forth in the Governing Documents, the Company has discretion as to the sale of the collateral. CDO investors do not have authority to impose restrictions on the Company's investment discretion.

The Company is retained with respect to its CDO Clients on a discretionary basis and is authorized to make the following determinations in accordance with the Governing Documents without investor consultation or consent before a transaction is effected (unless consultation is required with respect to principal trades, which the Company does not intend to employ as part of its standard investment strategy):

- the securities to sell;
- the total quantity/amount of securities to sell;
- the broker or dealer through whom securities are sold;
- the commission rates at which securities transactions are effected; and
- the prices at which securities are to be sold, which may include dealer spreads, mark-ups/mark-downs, and transaction costs.

## **Item 17 - Voting Client Securities**

Drive Shack does not have the authority to vote proxies for the Clients. Client proxies or other solicitations are sent directly from the Client custodian or a transfer agent to the Client.

Drive Shack is authorized to direct the Clients' participation in any class actions as it relates to the collateral. Drive Shack will determine whether the Fund will (a) participate in a recovery achieved through class actions, or (b) opt out of the class action and separately pursue their own remedy. If Drive Shack does participate and later receive any recovery amounts, they will be distributed to the applicable Clients at the time the recovery amounts are received from the settlement agent.

## **Item 18 - Financial Information**

The Company has never filed for bankruptcy and is not aware of any financial condition that is expected to affect its ability to continue to act as collateral manager.

## **Item 19 – Information for State Registered Advisers**

This item is not applicable to the Company.