

MIDDLEBY CORP
Form DEF 14A
April 12, 2006
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant x

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Check the appropriate box:

- o Preliminary Proxy Statement
- o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- x Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to §240.14a-12

The Middleby Corporation

(Name of Registrant as Specified In Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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- x No fee required.
- o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1)	Title of each class of securities to which transaction applies:
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(3)	Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
(4)	Proposed maximum aggregate value of transaction:
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1400 Toastmaster Drive
Elgin, Illinois 60120

April 12, 2006

Notice of Annual Stockholders Meeting:

You are hereby notified that the Annual Meeting of Stockholders (the Meeting) of The Middleby Corporation (the Company) will be held at the Company's executive offices located at 1400 Toastmaster Drive, Elgin, Illinois 60120 at 10:30 a.m., local time, on, Friday, May 12, 2006, for the following purposes:

- (1) To elect eight directors to hold office until the 2007 Annual Meeting.
- (2) To consider and act on a proposal to ratify the selection of Deloitte & Touche LLP as independent public accountants of the Company for the current fiscal year ending December 30, 2006.
- (3) To consider and act on a proposal to approve The Middleby Corporation Executive Officer Incentive Plan.
- (4) To transact such other business as may properly come before the Meeting or any adjournment thereof.

The Board of Directors has fixed the close of business on March 27, 2006 as the record date for the determination of stockholders entitled to notice of and to vote at the Meeting.

You are invited to attend the Meeting in person. If you attend the Meeting in person, you may vote your shares by bringing valid photo identification and delivering your completed proxy card or ballot at the Meeting. Please note that if you hold your shares through a bank, broker or other nominee, you must also bring a form of legal proxy, which you must request from such nominee, in order to vote at the Meeting.

Whether or not you plan to attend the Meeting in person, we urge you to return your proxy promptly in accordance with the following instructions. If you own shares in your own name, you may vote (i) by signing and returning the enclosed proxy card in the postage-paid envelope provided, (ii) by telephone or (iii) electronically via the Internet, as described in further detail on the proxy card. If you own shares through a bank, broker or other nominee, please execute your vote by following the instructions provided by such nominee.

By Order of the Board of Directors
MARTIN M. LINDSAY
Treasurer

1400 Toastmaster Drive
Elgin, Illinois 60120

2006 ANNUAL MEETING OF STOCKHOLDERS
May 12, 2006
PROXY STATEMENT

GENERAL

This Proxy Statement and the accompanying proxy are furnished to stockholders of The Middleby Corporation (the "Company") in connection with the solicitation of proxies by the Company's Board of Directors (the "Board") for use at the 2006 Annual Meeting of Stockholders (the "Meeting") to be held at the Company's executive offices located at 1400 Toastmaster Drive, Elgin, Illinois 60120, at 10:30 a.m., local time, on Friday, May 12, 2006, for the purposes set forth in the accompanying Notice of Meeting. This Proxy Statement, the form of proxy included herewith, and the Company's Annual Report to Stockholders for the fiscal year ended December 31, 2005, are being mailed to stockholders on or about April 12, 2006.

Stockholders of record at the close of business on March 27, 2006 are entitled to notice of and to vote at the Meeting. On such date there were outstanding 7,901,375 shares of common stock, par value \$0.01 per share, of the Company ("Common Stock"). In deciding all questions, each holder of Common Stock will be entitled to one vote, in person or by proxy, for each share held on the record date.

Stockholders who are entitled to vote at the Meeting may vote by proxy pursuant to the following methods: (i) stockholders who own shares in their own name may vote by mail, telephone or electronically via the Internet, pursuant to the instructions on the proxy card enclosed with this Proxy Statement or (ii) stockholders who own shares through a bank, broker or other nominee should follow the instructions provided by such nominee.

The election inspectors appointed for the Meeting will determine the presence of a quorum and tabulate the votes cast by proxy or in person at the Meeting. The presence, in person or represented by proxy, of the holders of a majority of the shares of Common Stock outstanding and entitled to vote at the Meeting is necessary to constitute a quorum. A quorum is necessary for the transaction of business at the Meeting. Abstentions and broker non-votes will be included in determining the presence or absence of a quorum. Generally, broker non-votes occur on a proposal when a broker indicates on the proxy that it does not have discretionary authority as to certain shares to vote on a particular matter or when a broker has such discretionary authority but does not exercise such discretion.

The eight nominees for election to the Board of Directors who receive the greatest number of votes cast for the election of directors by the shares present, in person or represented by proxy, will be elected to the Board of Directors. For the election of directors, abstentions and broker non-votes will have the effect of neither a vote FOR nor a vote AGAINST the nominee and thus will have no effect on the outcome. Approval of all other matters that are properly brought before the Meeting, including the proposals to ratify the Company's appointment of independent public accountants and to approve the proposal to adopt the Company's Executive Officer Incentive Plan, requires the vote of a majority of the votes cast at the Meeting by holders of shares present in person or represented by proxy and entitled to vote at the Meeting. For these other matters, abstentions and broker non-votes will not be

counted as votes cast either FOR or AGAINST approval of such matters and therefore will not have an effect on the outcome of the votes.

Properly executed proxies will be voted in the manner directed by the stockholders. If no direction is made, such proxies will be voted as follows:

- Proposal No. 1 Election of Directors ; FOR the election of each of the named nominees as a director of the Company;
- Proposal No. 2 Ratification of Selection of Independent Public Accountants ; FOR the ratification of the selection of Deloitte & Touche LLP as the Company's independent public accountants for the current fiscal year ending December 30, 2006;
- Proposal No. 3 Approval of the Executive Officer Incentive Plan ; FOR the approval of the Executive Officer Incentive Plan.

Any proxy may be revoked by the stockholder at any time prior to the voting thereof by notice in writing to the Secretary of the Company, either prior to the Meeting (at the above Elgin address) or at the Meeting if the stockholder attends in person or a later dated proxy will revoke a prior dated proxy. As of the date of this Proxy Statement, the Board of Directors knows of no other business which will be presented for consideration at the Meeting. If other proper matters are presented at the Meeting, however, it is the intention of the proxy holders named in the enclosed form of proxy to take such actions as shall be in accordance with their best judgment.

The information contained in this Proxy Statement relating to the occupations and security holdings of directors and officers of the Company and such individuals' transactions with the Company is based upon information received from each individual as of March 27, 2006.

**SECURITY OWNERSHIP OF
CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information with respect to the beneficial ownership of shares of the Common Stock, as of March 27, 2006, by each person known by the Company to be the beneficial owner of more than five percent of Common Stock, each director and each nominee for director of the Company, each named executive officer of the Company and all current directors and executive officers of the Company as a group. Unless otherwise indicated below, the address for each person listed below is c/o The Middleby Corporation, 1400 Toastmaster Drive, Elgin, Illinois 60120.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent Of Class
Directors, Director Nominees, and Executive Officers:		
Selim A. Bassoul	980,655 (1)	11.9 %
Timothy J. FitzGerald	126,847 (2)	1.6 %
Phil Dei Dolori	46,162 (3)	*
Robert L. Yohe	35,000	*
Mark Sieron	49,050 (4)	*
Sabin C. Streeter	26,500 (5)	*
John R. Miller III	32,000	*
Philip G. Putnam	10,000 (5)	*
Nazih Ibrahim	6,500 (6)	*
Gordon O Brien	3,050	*
Robert B. Lamb		*
Ryan Levenson	500	*
All directors and executive officers of the Company	1,315,764 (1) (6)	15.6 %
Other 5% Holders:		
Morgan Stanley	612,097 (7)	7.8 %
Lord Abbett & Co. LLC	404,547 (8)	5.1 %

* Indicates beneficial ownership of less than 1%.

- Mr. Bassoul is the Chairman, Chief Executive Officer and President of the Company, his holdings include 425,000 shares of common stock subject to options exercisable within 60 days, 240,000 shares of restricted Common Stock, and 23,000 shares held by Mr. Bassoul's spouse as trustee.
- Mr. FitzGerald is Vice President and Chief Financial Officer of the Company, his holdings include 46,000 shares of common stock subject to options exercisable within 60 days, 40,000 shares of restricted common stock, and 4,700 shares held by Mr. FitzGerald's spouse and children.
- Mr. Dei Dolori is a Group President, his holdings include 31,475 shares of common stock subject to options exercisable within 60 days.
- Mr. Sieron is a division Vice President, his holdings include 19,050 shares of common stock subject to options exercisable within 60 days.
- Includes 3,000 shares of common stock, granted in March 2003, subject to options exercisable within 60 days.
- Mr. Ibrahim is a division President, his holdings include 3,750 shares of common stock subject to options exercisable within 60 days.

7. Morgan Stanley share holdings and percentage ownership information presented in the above table was obtained from a Schedule 13G filing dated December 31, 2005. The address of Morgan Stanley is 1585 Broadway, New York, NY 10036.

8. Lord Abbett & Co. LLC share holdings and percentage ownership information presented in the above table was obtained from a Schedule 13G filing dated December 30, 2005. The address of Lord Abbett & Co. LLC is 90 Hudson Street, Jersey City, NJ 07302.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Pursuant to the terms of the Stock Repurchase Agreement, dated December 23, 2004, by and among the Company, William F. Whitman, Jr., the former Chairman of the Board of Directors, members of his family, including Laura B. Whitman and W. Fifield Whitman, III, former directors, and trusts controlled by his family (collectively, the Whitmans) (the Stock Repurchase Agreement), the Company repurchased 1,808,774 shares of the Common Stock and 271,000 stock options from the Whitmans for a total aggregate purchase price of \$83,974,578 in cash. The repurchased shares represented 19.6% of the Company's outstanding shares and were repurchased for \$75,968,508 at \$42.00 per share. The 271,000 stock options were purchased for \$8,006,070, which represented the difference between \$42.00 and the exercise price of the option. In connection with the Stock Repurchase Agreement, William F. Whitman, Jr., Laura B. Whitman and W. Fifield Whitman, III resigned as directors of the Company.

Pursuant to the terms of the Stock Repurchase Agreement, the Company was required to file a registration statement under the Securities Act of 1933, as amended, with respect to the sale of some or all of the Whitmans' remaining 1,851,719 shares of Common Stock in an underwritten public offering. The underwritten public offering was completed in July 2005 with the Whitman family selling 1,395,381 shares to public and institutional investors. Middleby did not sell any shares or receive any proceeds from the sale of stock by then selling stockholders in the offering.

In February 2005, the Company settled all remaining pension obligations associated with William F. Whitman, Jr. for \$7.5 million in cash.

The Board of Directors agreed to waive the retirement age requirement for A. Don Lummus so that upon his retirement from the Board of Directors, Mr. Lummus would be eligible for full retirement benefits under the directors' retirement plan described below in the Directors Retirement Plan section of this Proxy Statement. Accordingly, Mr. Lummus' full retirement benefit under the directors' retirement plan was paid out in a lump sum in June 2005. He was 69 at the time of his retirement.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

The Company is required to report to its stockholders those directors, officers (as defined in Rule 16a-1(f) promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act)) and owners of more than 10% of any class of the Company's equity securities registered pursuant to Section 12 of the Exchange Act, who fail to timely file reports of beneficial ownership and changes in beneficial ownership, as required by Section 16(a) of the Exchange Act during the Company's most recent fiscal year. A review of fiscal year 2005 reporting records reveals that three such reports were filed in an untimely manner. John R. Miller III filed one late Form 4 filing, Gordon O'Brien filed a late Form 3 filing, and Robert Lamb filed a late Form 3 filing. As of March 27, 2006, there are no known Securities and Exchange Commission (SEC) beneficial ownership reports pending or overdue.

PROPOSAL NO. 1 ELECTION OF DIRECTORS

Eight directors are to be elected by a plurality of the stockholder votes cast at the Meeting to serve until the 2007 Annual Meeting of Stockholders and until their successors shall be duly elected and qualified or until their earlier death, resignation or removal. Mr. Bassoul, Chairman, President, and Chief Executive Officer of the Company, identified Ryan Levenson as a potential director candidate and provided the name of Mr. Levenson to a majority of the independent directors. A majority of the independent directors evaluated the candidacy of Mr. Levenson based upon the director candidate factors discussed below. After careful consideration of the factors and an evaluation of Mr. Levenson's independence, a majority of the independent directors recommended the nomination of Mr. Levenson to the Board. On March 31, 2006, the Board adopted a resolution to increase the size of the Board from seven to eight members and selected Mr. Levenson for nomination to the Board. The following persons have been nominated:

Name	Age	Principal Occupation(s) During Past Five Years and Other Public Directorships	Director of Company or Predecessor Since
Selim A. Bassoul	49	President, Chief Executive Officer, and Chairman of the Board of the Company and its principal subsidiary, Middleby Marshall Inc. (MM) since December 23, 2004. President and Chief Executive Officer of the Company and MM from 2001 to 2004. Chief Operating Officer of the Company and MM from 2000 to 2001. Group President of Middleby Cooking Systems Group from 1999 to 2000. President of Southbend, a Middleby company, from 1996 to 1999.	2001
Robert B. Lamb	64	Clinical Professor of Management at the Leonard N. Stern School of Business at New York University since 1977. Has served as adviser to U.S. and foreign corporations, commercial banks, investment banks and government agencies. Director of Bondholders Communication Corporation. Member of the Board of Editors, The Municipal Finance Journal, since 1985.	2005
Ryan Levenson	30	Managing Partner of Haynes Manor Capital, LLC, investment group from 2003 to current. Vice President of Business Development of Lighten Up, LLC, a subsidiary of MSI, from 2003 to 2006. Investment Analyst for Cramer, Rosenthal, McGlynn, hedge fund, from 2001 to 2003.	N/A
John R. Miller III	65	Chairman and Chief Executive Officer of E.O.P, Inc., publisher of special market trade magazines since 1968. Director of First National Bank of Long Island and its holding company, the First of Long Island Corporation.	1978
Gordon O Brien	40	Principal and Managing Director of American Capital Strategies since 1998. Vice President of Pennington Partners/PENMAN Partners, a private equity firm, from 1995 to 1998. A Board member of numerous companies as a representative of American Capital Strategies.	2005

Philip G. Putnam	65	Managing Director, Flagstone Capital, LLC, investment bankers, since 2000. Executive Vice President, Brean Murray & Co. Inc., investment bankers, from 1996 to 2000.	1978
Sabin C. Streeter	64	Adjunct Professor and Executive-in-Residence at Columbia Business School since 1997. Managing Director and Vice President of Donaldson, Lufkin & Jenrette Securities Corp., investment bankers, from 1976 to 1997.	1987
Robert L. Yohe	69	Retired Vice Chairman and Director of Olin Corporation, a chemicals manufacturer, from 1993 to 1994, and from 1985 to 1992, President of Olin Chemicals, a division of Olin Corporation. Director of Airgas, Inc., Calgon Carbon Corporation, and Marsulex Inc.	1996

The Board of Directors knows of no reason why any of the foregoing nominees will be unavailable to serve, but, in the event of any such unavailability, the proxies received will be voted for such substitute nominees as the Board of Directors may recommend.

Vote Required for Approval; Board Recommendation

Nominees for election to the Board of Directors who receive the greatest number of votes cast for the election of directors by the shares present, in person or represented by proxy, will be elected to the Board of Directors. With regard to the election of directors, votes may be cast FOR or withheld AGAINST each nominee. Votes that are withheld will have no effect on the outcome of the election because directors will be elected by a plurality of the votes cast. Stockholders eligible to vote at the Meeting do not have cumulative voting rights with respect to the election of directors.

THE BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR EACH OF THE ABOVE NAMED NOMINEES AS A DIRECTOR OF THE COMPANY.

Committees; Board Meetings

The Board of Directors of the Company held four meetings during the fiscal year ended December 31, 2005, and each director attended at least 75% of all Board and applicable Committee meetings. Although the Company does not have a formal attendance policy, the Company encourages all directors to attend the annual meetings of stockholders. All of the Company's directors at the time attended the 2005 Annual Meeting of Stockholders. Current directors, Messrs. Putnam, Streeter, Yohe, Miller, O'Brien, and Lamb, and director nominee Mr. Levenson, have been determined by the Board of Directors to be independent directors as such term is defined under Rule 4200(a)(15) The Nasdaq Stock Market, Inc. (Nasdaq). The Board is comprised of a majority of independent directors. The Company currently has an Audit Committee and a Compensation Committee.

From January 2, 2005 to May 11, 2005, the Audit Committee was comprised of Messrs. Putnam (Chairman), Streeter, and Lummus. From May 11, 2005 to December 31, 2005, the Audit Committee was comprised of Messrs. Putnam (Chairman), Streeter, and Lamb. During the fiscal year ended December 31, 2005, the Audit Committee met four times for the purposes of (i) approving the selection of the Company's independent auditors; (ii) reviewing the arrangements for and scope of the audit and pre-approving permitted non-audit services; (iii) reviewing the Company's interim and annual financial

statements or other results of the audit; (iv) reviewing the Company's internal accounting procedures and controls and the recommendations of the Company's independent auditors; and (v) reviewing the external audit process. All of the members of the Audit Committee have been determined by the Board of Directors to be financially sophisticated as required by Nasdaq Rule 4350(d) and to be audit committee financial experts as such term is defined in Item 401(h) of Regulation S-K promulgated by the SEC. All of the members of the Audit Committee have been determined by the Board of Directors to meet the additional independence criteria set forth in Nasdaq Rule 4350(d). The Audit Committee has a charter which was approved by the Board of Directors on March 4, 2003 and modified as of February 25, 2004, a copy of which was attached as Appendix A to the Company's proxy statement for the 2004 Annual Meeting of Stockholders of the Company.

From January 2, 2005 to May 11, 2005, the Compensation Committee was comprised of Messrs. Yohe (Chairman), Miller, and Lummus. From May 11, 2005 to December 31, 2005, the Compensation Committee was comprised of Messrs. Yohe (Chairman), Miller, and O'Brien. During the fiscal year ended December 31, 2005, the Compensation Committee met three times. The function of the Compensation Committee is to make recommendations concerning the compensation of the Chairman of the Board, the President and Chief Executive Officer, and other executive officers of the Company. The Compensation Committee is also responsible for making grants to executive officers under the 1998 Stock Incentive Plan and for administering the Management Incentive Compensation Plan. All of the members of the Compensation Committee have been determined by the Board of Directors to be independent as defined under applicable Nasdaq listing standards.

The Board of Directors does not have a standing nominating committee or a nominating committee charter that addresses the nominations process. In fiscal year 2005, the Board considered a recommendation from management of the Company that the Board establish a nominating committee comprised solely of non-employee directors, adopt a nominating committee charter and establish a formal policy for consideration of director candidates submitted by the Company's stockholders. After reviewing management's recommendation, the Board determined that it was not necessary to have a separate nominating committee or a formal policy for consideration of director candidates submitted by the Company's stockholders at this time. The Board believes that it can adequately fulfill the functions of a nominating committee without having to appoint an additional committee to perform that function based upon the limited size of the Board and the current and anticipated operations and needs of the Company.

A majority of the independent directors discuss and evaluate potential director candidates and recommends potential director candidates to the full Board of Directors for selection. The full Board then considers the potential director candidates who have been recommended by a majority of the independent directors. Because the Company's stockholders rarely, if ever, have recommended potential director candidates, the Board does not have a formal policy for consideration of potential director candidates recommended by the Company's stockholders, but the Board will give due consideration to any and all such candidates under the same criteria as internally generated candidates. In selecting director candidates, the Board considers a variety of factors, including but not limited to, a candidate's demonstrated good character and integrity, experience at strategy/policy setting levels, high level experience in dealing with business organizations, ability and willingness to devote time to the affairs of the Company, financial, technical or other special skills and experience, business contacts and ability to work effectively with other Board members.

Executive sessions of the independent directors are held in conjunction with regularly scheduled meetings of the Board of Directors and as otherwise deemed necessary. Robert L. Yohe is the acting lead independent director of the Board.

The Board of Directors has adopted the following procedure for stockholders and other interested parties to communicate with the Board. All such communications should be sent by email to the Chairman of the Board at the address found on the Company's website, www.middleby.com, or by regular mail to the Chairman of the Board at the Company's executive office in Elgin, Illinois. The Chairman will collect and organize all such communications, deleting any sales or other solicitations and any which contain offensive material. A summary of the communications received will be periodically provided to the Board, which will determine the disposition of any such communication.

EXECUTIVE OFFICERS

The following is a summary of the professional experience of the executive officers of the Company.

Name	Age	Principal Occupation(s) During Past Five Years
Selim A. Bassoul	49	Refer to professional experience, described above under Proposal No. 1 Election of Directors.
Timothy J. FitzGerald	36	Vice President and Chief Financial Officer of the Company and MM since May 2003. Vice President and Corporate Controller of the Company and MM from February 2000 to May 2003. Corporate Controller of the Company and MM from November 1998 to May 2003.