

MIDDLEBY CORP  
Form S-4  
September 09, 2008

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As filed with the Securities and Exchange Commission on September 9, 2008

Registration Statement No. 333-

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM S-4  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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THE MIDDLEBY CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

3580  
(Primary Standard Industrial  
Classification Code Number)

36-3352497  
(I.R.S. Employer  
Identification Number)

1400 Toastmaster Drive  
Elgin, Illinois 60120  
(847) 741-3300  
(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

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Timothy J. FitzGerald  
Vice President and Chief Financial Officer  
1400 Toastmaster Drive  
Elgin, Illinois 60120  
(847)741-3300  
(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

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Copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effectiveness of

this registration statement and the satisfaction or waiver of all other conditions under the merger agreement described herein.

If the securities being registered on this form are to be offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered (1)	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.01 par value per share	1,653,531 (2)	N/A	\$89,472,569 (3)	\$3,516.27 (4)

- (1) This Registration Statement relates to common stock, par value \$0.01 per share, of the registrant issuable to holders of common stock, par value \$0.01 per share ("TurboChef common stock"), of TurboChef Technologies, Inc., a Delaware corporation ("TurboChef"), in the proposed merger of TurboChef with and into Chef Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the registrant.
- (2) Based on the maximum number of shares of the registrant's common stock expected to be issued in connection with the merger, calculated as the product of (a) 30,409,305, the aggregate number of shares of TurboChef common stock outstanding as of September 4, 2008, plus 936,835, the aggregate number of shares of TurboChef common stock issuable pursuant to the exercise of outstanding restricted stock units as of September 4, 2008, plus 36,557, the aggregate number of shares of TurboChef common stock issuable pursuant to the exercise of outstanding preferred unit exchange rights plus, 2,640,577, the aggregate number of shares of TurboChef common stock issuable pursuant to the exercise of outstanding vested options, as of September 4, 2008 and (b) an exchange ratio of 0.0486 of a share of the registrant's common stock for each such share of TurboChef common stock.
- (3) Estimated solely for purposes of calculation of the registration fee in accordance with Rules 457(c) and (f) of the Securities Act of 1933, as amended, based upon the product of (a) 1,653,531, the maximum number of shares of the registrant's common stock expected to be issued in the merger (calculated as set forth in note (2) above), and (b) \$54.11, the average of the high and low sale prices for shares of the registrant's common stock as reported on the NASDAQ Global Select Market on September 4, 2008.
- (4) Calculated in accordance with Section 6(b) of the Securities Act of 1933, as amended, at a rate equal to \$39.30 per \$1,000,000 of the proposed maximum aggregate offering price.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.



The information in this proxy statement/prospectus is not complete and may be changed. Middleby may not sell these securities until the registration statement filed with the Securities and Exchange Commission, of which this document is a part, is declared effective. This proxy statement/prospectus is not an offer to sell these securities and neither TurboChef nor Middleby is soliciting an offer to buy these securities in any jurisdiction where the offer, solicitation or sale is not permitted.

PRELIMINARY—SUBJECT TO COMPLETION—DATED SEPTEMBER 9, 2008

TURBOCHEF TECHNOLOGIES, INC.

SIX CONCOURSE PARKWAY

SUITE 1900  
ATLANTA, GA 30328

PROPOSED MERGER—YOUR VOTE IS VERY IMPORTANT

The board of directors of TurboChef Technologies, Inc. ("TurboChef") has unanimously approved an agreement and plan of merger, which we refer to as the merger agreement, pursuant to which TurboChef will merge with and into a wholly-owned subsidiary of The Middleby Corporation ("Middleby"), with the subsidiary continuing as the surviving entity. If the merger is completed, TurboChef stockholders will receive 0.0486 of a share of Middleby common stock and \$3.67 in cash for each share of TurboChef common stock. The exchange ratio for shares of Middleby common stock to be received by TurboChef stockholders is fixed and will not be adjusted to reflect stock price changes prior to the closing.

The shares of Middleby common stock are listed on the NASDAQ Global Select Market under the symbol "MIDD." Based on the closing sale price for Middleby common stock on August 11, 2008, the last trading day before public announcement of the merger, the 0.0486 of a share of Middleby common stock and \$3.67 in cash represented approximately \$6.47 in value for each share of TurboChef common stock. The value of the merger consideration to be received in exchange for each share of TurboChef common stock will fluctuate with the market price of Middleby common stock. Based on the closing sale price for Middleby common stock on \_\_\_\_\_, 2008, the latest practicable trading date before the printing of this proxy statement/prospectus, the 0.0486 of a share of Middleby common stock and \$3.67 in cash represented approximately \$ \_\_\_\_\_ in value for each share of TurboChef common stock. Based on the number of shares of TurboChef common stock outstanding as of \_\_\_\_\_, 2008, the aggregate number of shares of Middleby common stock to be issued by Middleby in the merger is estimated to be \_\_\_\_\_ shares.

Your vote is very important, regardless of the number of shares you own. The merger cannot be completed unless holders of a majority of the outstanding shares of TurboChef common stock as of the record date vote in favor of the proposal to adopt the merger agreement. TurboChef is holding a special meeting of its stockholders to vote on the proposal to adopt the merger agreement. Information about the TurboChef special meeting and the proposed merger is contained in this proxy statement/prospectus. Middleby has also entered into a voting and support agreement with directors and officers of TurboChef who own, collectively, approximately 20% of TurboChef's outstanding shares. We urge you to read this proxy statement/prospectus carefully. For a discussion of risk factors you should consider in evaluating the merger on which you are being asked to vote, see "Risk Factors" beginning on page 28 of this proxy statement/prospectus.

Whether or not you plan to attend the TurboChef special meeting, please submit your proxy by following the instructions on your proxy card or the information forwarded by your bank, broker, custodian or other record holder as soon as possible to make sure that your shares are represented at the TurboChef special meeting.

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The board of directors of TurboChef unanimously recommends that TurboChef stockholders vote FOR the proposal to adopt the merger agreement and FOR the proposal to approve any motion to adjourn or postpone the TurboChef special meeting to a later date or dates if necessary to solicit additional proxies.

Richard E. Perlman  
Chairman of the Board

James K. Price  
President and Chief Executive Officer

Atlanta, Georgia  
, 2008

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger or the other transactions described in this proxy statement/prospectus nor have they approved or disapproved of the issuance of the Middleby common stock in connection with the merger, or determined if this proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus is dated \_\_\_\_\_, 2008, and is first being mailed to TurboChef stockholders on or about \_\_\_\_\_, 2008.

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TURBOCHEF TECHNOLOGIES, INC.  
SIX CONCOURSE PARKWAY  
SUITE 1900  
ATLANTA, GA 30328

To the Stockholders of TurboChef Technologies, Inc.:

You are cordially invited to attend a special meeting of stockholders of TurboChef Technologies, Inc. ("TurboChef") to be held at the offices of Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Suite 2400, Atlanta, Georgia 30308, on \_\_\_\_\_ at \_\_\_\_\_, local time, for the following purposes:

1. To adopt the Agreement and Plan of Merger, dated as of August 12, 2008, by and among The Middleby Corporation ("Middleby"), Chef Acquisition Corp. and TurboChef, as may be amended from time to time, a copy of which has been included as Annex A to the accompanying proxy statement/prospectus.
2. To approve any procedural matters incident to the conduct of the special meeting, such as adjournment of the special meeting, including any adjournment for the purpose of soliciting additional proxies in favor of the proposal to adopt the merger agreement in the event there are not sufficient votes for approval of the proposal to adopt the merger agreement at the time of the TurboChef special meeting.

The accompanying proxy statement/prospectus further describes the matters to be considered at the TurboChef special meeting.

The TurboChef board of directors has set \_\_\_\_\_ as the record date for the TurboChef special meeting. Only holders of record of shares of TurboChef common stock at the close of business on the record date will be entitled to notice of and to vote at the TurboChef special meeting and any adjournments or postponements thereof. To ensure your representation at the TurboChef special meeting, please complete and return the enclosed proxy card. Please vote promptly whether or not you expect to attend the TurboChef special meeting. Submitting a proxy now will not prevent you from being able to vote at the TurboChef special meeting by attending in person and casting a vote. If your shares are held in a stock brokerage account or by a bank or other broker nominee, then you are not the record holder of your shares, and while you are welcome to attend the special meeting, you would not be permitted to vote unless you obtained a signed proxy from your broker nominee (who is the holder of record). However, your broker nominee has enclosed a voting instruction card for you to use to indicate your voting preference, which may provide that you can deliver your instructions by telephone or over the Internet. Please complete the voting instruction card and return it to your broker nominee as soon as possible.

The board of directors of TurboChef unanimously recommends that you vote FOR the proposal to adopt the merger agreement and FOR the proposal to approve any procedural matters incident to the conduct of the special meeting, including any adjournment thereof if necessary to solicit additional proxies.

By Order of the Board of Directors,

Richard E. Perlman  
Chairman of the Board

James K. Price  
President and Chief Executive Officer

Atlanta, Georgia  
, 2008



IT IS IMPORTANT THAT YOU VOTE YOUR SHARES PROMPTLY. YOU CAN FIND INSTRUCTIONS FOR VOTING BY MAIL, TELEPHONE OR INTERNET ON THE ENCLOSED PROXY CARD. YOU MAY REVOTE YOUR PROXY AT ANY TIME BEFORE THE VOTE IS TAKEN AT THE MEETING.

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ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates important business and financial information about Middleby and TurboChef from documents that each company has filed with the Securities and Exchange Commission, which we refer to as the SEC, but that have not been included in or delivered with this proxy statement/prospectus. For a listing of documents incorporated by reference into this proxy statement/prospectus, please see the section entitled "Where You Can Find More Information" beginning on page 89 of this proxy statement/prospectus.

You can also obtain copies of this information (excluding all exhibits unless the applicable company has specifically incorporated by reference an exhibit in this proxy statement/prospectus), without charge, upon written or oral request to the appropriate company at the following addresses and telephone numbers:

The Middleby Corporation  
1400 Toastmaster Drive  
Elgin, Illinois 60120  
Attn: Investor Relations  
(847) 741-3300

TurboChef Technologies, Inc.  
Six Concourse Parkway, Suite 1900  
Atlanta, Georgia 30328  
Attn: Investor Relations  
(678) 987-1700

In order to receive timely delivery of the documents, you must make your requests no later than \_\_\_\_\_, 2008.

No person is authorized to give any information or to make any representation with respect to the matters this proxy statement/prospectus describes other than those contained in this proxy statement/prospectus, and, if given or made, the information or representation must not be relied upon as having been authorized by Middleby or TurboChef. This proxy statement/prospectus does not constitute an offer to sell, or a solicitation of an offer to buy, securities or a solicitation of a proxy in any jurisdiction where, or to any person to whom, it is unlawful to make such an offer or a solicitation. Neither the delivery of this proxy statement/prospectus nor any distribution of securities made under this proxy statement/prospectus shall, under any circumstances, create an implication that there has been no change in the affairs of Middleby or TurboChef since the date of this proxy statement/prospectus or that the information contained herein is correct as of any time subsequent to the date of this proxy statement/prospectus.

See "Where You Can Find More Information" on page 89 of this proxy statement/prospectus.

VOTING BY INTERNET, TELEPHONE OR MAIL

TurboChef stockholders of record as of the applicable record date may submit their proxies by:

Internet. You can vote over the Internet by accessing the website at \_\_\_\_\_ and following the instructions on the website. Have your proxy card in hand when you access the website because you will have to enter the control number printed on your proxy card. Internet voting is available 24 hours a day. If you vote over the Internet, do not return your proxy card(s) by mail.

Telephone. You can vote by telephone by calling the toll-free number \_\_\_\_\_ in the United States, Canada and Puerto Rico on a touch-tone telephone. You will then be prompted to enter the control number printed on your proxy card and follow the subsequent instructions. Telephone voting is available 24 hours a day. If you vote by telephone, do not return your proxy card(s) by mail.

Mail. You can vote by mail by completing, signing, dating and mailing your proxy card(s) in the postage-paid envelope included with this proxy statement/prospectus. If you elect to vote by mail, you should vote early to ensure

that your proxy card is received before the special meeting.

If you vote your proxy over the Internet or by telephone, you must do so before \_\_\_\_\_ p.m., Atlanta time, the day before the special meeting.

Voting Shares Held in Street Name

If you are a TurboChef stockholder and hold your shares through a bank, broker, custodian or other recordholder (that is, in street name), please refer to your proxy card or the information forwarded by your bank, broker, custodian or other recordholder to see what options are available to you.

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