

MIDDLEBY CORP  
Form 4  
December 31, 2009

**FORM 4**

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

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
FITZGERALD TIMOTHY JOHN

(Last) (First) (Middle)

C/O MIDDLEBY CORPORATION, 1400 TOASTMASTER DRIVE

(Street)

ELGIN, IL 60120

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
MIDDLEBY CORP [MIDD]

3. Date of Earliest Transaction (Month/Day/Year)  
12/29/2009

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director  10% Owner  
 Officer (give title below)  Other (specify below)  
Chief Financial Officer

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

| 1. Title of Security (Instr. 3) | 2. Transaction Date (Month/Day/Year) | 2A. Deemed Execution Date, if any (Month/Day/Year) | 3. Transaction Code (Instr. 8) | 4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5) | 5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4) | 6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4) | 7. Nature of Indirect Beneficial Ownership (Instr. 4) |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|---|
|                                 |                                      |  | Code                           | V Amount (A) or (D) Price   |   |  |   |
| Common Stock                    | 12/29/2009                           |  | D <sup>(1)(2)</sup>            | 18,000<br>(1) (2) D \$ 0<br>(1)                                   | 178,062   | D  |   |
| Common Stock                    | 12/29/2009                           |  | D <sup>(1)(3)</sup>            | 33,000<br>(1) (3) D \$ 0<br>(1)                                   | 145,062   | D  |   |
| Common Stock                    | 12/29/2009                           |  | D <sup>(1)(4)</sup>            | 30,000<br>(1) (4) D \$ 0<br>(1)                                   | 115,062   | D  |   |
| Common Stock                    | 12/29/2009                           |  | A <sup>(5)</sup>               | 81,000<br>(5) A \$ 0<br>(5)                                       | 196,062   | D  |   |

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

| 1. Title of Derivative Security (Instr. 3) | 2. Conversion or Exercise Price of Derivative Security | 3. Transaction Date (Month/Day/Year) | 3A. Deemed Execution Date, if any (Month/Day/Year) | 4. Transaction Code (Instr. 8) | 5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5) | 6. Date Exercisable and Expiration Date (Month/Day/Year) | 7. Title and Amount of Underlying Securities (Instr. 3 and 4) | 8. Price of Derivative Security (Instr. 5) | 9. Number of Derivative Securities Beneficially Owned (Instr. 5) |
|--|--|--------------------------------------|--|--------------------------------|---|--|---|--|--|
|  |  |                                      |  | Code                           | V (A) (D)   | Date Exercisable   | Expiration Date   | Title                                      | Amount or Number of Shares                                       |

## Reporting Owners

| Reporting Owner Name / Address   | Relationships |           |                         |       |
|--|---------------|-----------|-------------------------|-------|
|  | Director      | 10% Owner | Officer                 | Other |
| FITZGERALD TIMOTHY JOHN<br>C/O MIDDLEBY CORPORATION<br>1400 TOASTMASTER DRIVE<br>ELGIN, IL 60120 |               |           | Chief Financial Officer |       |

## Signatures

Timothy Fitzgerald 12/31/2009

\_\_Signature of Reporting Person Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, see Instruction 4(b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) The Board of Directors of the Company approved the cancellation of the unvested portion of Performance Stock first scheduled to vest at specified common stock prices of the Company on January 1, 2009, January 1, 2010, and January 1, 2011 pursuant to Restricted Stock Agreements with the Reporting Person.

(2) The cancelled shares relate to a portion of the Performance Stock award granted to the Reporting Person for a total of 45,000 shares on March 8, 2007. The Performance Stock was scheduled to vest in 20% increments annually beginning January 1, 2008 with the final vesting period on January 1, 2012. Vesting was contingent on the 30 day avg. for the Company's common stock as follows: 2008 tranche - \$62.50; 2009 tranche - \$70; 2010 tranche - \$77.50; 2011 tranche - \$87.50; and 2012 tranche - \$100. To date, the 2008 tranche has vested. As a result of the cancellation, the 2009, 2010 and 2011 tranches have been cancelled.

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- (3) The cancelled shares relate to a portion of the Performance Stock award granted to the Reporting Person for a total of 55,000 shares on May 7, 2007. The Performance Stock was scheduled to vest in 20% increments annually beginning January 1, 2008 with the final vesting period on January 1, 2012. Vesting was contingent on the 30 day avg. for the Company's common stock as follows: 2008 tranche - \$62.50; 2009 tranche - \$70; 2010 tranche - \$77.50; 2011 tranche - \$87.50; and 2012 tranche - \$100. As a result of the cancellation, the 2009, 2010 and 2011 tranches have been cancelled.
- (4) The cancelled shares relate to a portion of the Performance Stock award granted to the Reporting Person for a total of 60,000 shares on May 8, 2008. The Performance Stock was scheduled to vest in 25% increments annually beginning January 1, 2009 with the final vesting period on January 1, 2012. Vesting was contingent on the 30 day avg. for the Company's common stock as follows: 2009 tranche - \$61.23; 2010 tranche - \$67.35; 2011 tranche - \$74.08; 2012 tranche - \$81.49. As a result of the cancellation, the 2009, 2010 and 2011 tranches have been cancelled.
- (5) Transaction represents grant of Restricted Stock, which vests in two equal tranches, each subject to performance and time-based vesting requirements. Tranche 1 vests on March 15, 2011 if the Company has achieved a Return on Equity (as defined in the award agreement) of 10% for the fiscal 2010 period. Tranche 2 vests on January 1, 2012 (as measured on March 10, 2011) if the Company has achieved a Return on Equity of 12% for the same fiscal 2010 period. If the fiscal 2010 Return on Equity criteria is not met (as measured on March 10, 2011), the Restricted Stock will vest, on March 15, 2012, based on achievement of the same Return on Equity criteria for the fiscal 2011 period. If the Return on Equity criteria are not met for the fiscal 2010 or 2011 period, the Restricted Stock will be forfeited.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.