

BOSTON SCIENTIFIC CORP
Form 8-K
January 27, 2006

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): **January 25, 2006**

BOSTON SCIENTIFIC CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware		001-11083	04-2695240
(State or Other Jurisdiction of Incorporation)		(Commission File Number)	(I.R.S. Employer Identification Number)
One Boston Scientific Place, Natick, Massachusetts			01760-1537
(Address of Principal Executive Offices)			(Zip Code)

Registrant's Telephone Number, Including Area Code: **(508) 650-8000**

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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:

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

 - o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

 - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

 - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement

On January 25, 2006, Boston Scientific Corporation and Guidant Corporation entered into an Agreement and Plan of Merger (the Merger Agreement). The Merger Agreement provides for a business combination whereby Galaxy Merger Sub, Inc. (Merger Sub), an Indiana corporation and a wholly owned subsidiary of Boston Scientific, will merge with and into Guidant (the Merger). As a result of the Merger, the separate corporate existence of Merger Sub will cease and Guidant will continue as the surviving corporation in the Merger.

At the effective time of the Merger, each share of Guidant common stock (other than shares owned by Guidant, Boston Scientific and Merger Sub) will be converted into the right to receive a combination of (i) \$42.00 in cash and (ii) a number of shares of Boston Scientific common stock with a value, based upon the average closing price of Boston Scientific common stock during the 20 consecutive trading day period ending three trading days prior to the closing, of \$38.00, so long as the average closing price of Boston Scientific common stock during this period is within the range of \$22.62 to \$28.86. If the average closing price of Boston Scientific common stock during such period is less than \$22.62, Guidant shareholders will receive 1.6799 Boston Scientific shares for each share of Guidant common stock, and if the average closing price of Boston Scientific common stock during such period is greater than \$28.86, Guidant shareholders will receive 1.3167 Boston Scientific shares for each share of Guidant common stock. Additionally, if the closing does not occur on or prior to March 31, 2006, the \$80 per share price would be increased by \$0.0132 in cash for each day between April 1, 2006 and the date of closing. Outstanding Guidant stock options at the time of the closing will be converted into options to purchase Boston Scientific common stock.

The Merger is subject to the approval of the Guidant and Boston Scientific shareholders. In addition, the Merger is subject to clearance under the Hart-Scott-Rodino Antitrust Improvements Act and the European Union merger control regulation, as well as other customary closing conditions.

Boston Scientific and Guidant have made customary representations, warranties and covenants in the Merger Agreement, including Guidant making covenants not to solicit alternative transactions or, subject to certain exceptions, to enter into discussions concerning, or provide confidential information in connection with, an alternative transaction.

The Merger Agreement contains certain termination rights for both Boston Scientific and Guidant, and further provides that, upon termination of the Merger Agreement under certain circumstances, (i) Guidant may be obligated to pay Boston Scientific a termination fee of \$800 million and (ii) Boston Scientific may be obligated to pay Guidant a termination fee of \$800 million.

A copy of the Merger Agreement is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The foregoing description of the Merger Agreement is qualified in its entirety by reference to the full text of the Merger Agreement.

The representations and warranties of each of Boston Scientific and Guidant contained in the Merger Agreement have been made solely for the benefit of the other party and such representations and warranties should not be relied on by any other person. In addition, such representations and warranties (1) will not survive consummation of the Merger and, other than certain representations and warranties relating to broker and advisor fees, cannot be the basis for any claims under the Merger Agreement by the other party after termination of the Merger Agreement except if willfully and materially breached, (2) may be intended not as statements of actual fact, but rather as a way of allocating risk between the parties, (3) are subject to the materiality standard described in the Merger Agreement, which may differ from what may be viewed as material by others, and (4) were made only as of the date of the Merger Agreement or such other date as is specified in the Merger Agreement.

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In connection with the Merger, Boston Scientific and Abbott Laboratories entered into a transaction agreement, dated as of January 8, 2006 and amended as of January 16, 2006,

pursuant to which, among others things, Abbott will acquire Guidant's vascular intervention and endovascular solutions businesses. Under the terms of the agreement, Abbott has agreed to pay \$4.1 billion for the businesses, with additional payments of \$250 million upon U.S. Food and Drug Administration (FDA) approval of an everolimus-based drug-eluting stent product and \$250 million upon a similar approval in Japan, if in each case such approval is received within 10 years of closing. Also under the terms of the Agreement, Abbott has agreed to provide a five-year, \$900 million 4% interest-bearing loan to Boston Scientific and to purchase \$1.4 billion of Boston Scientific common stock (approximately 56 million shares). The agreement is contingent upon the satisfaction or waiver of the conditions to the Merger or the closing of the Merger, as well as other customary closing conditions, including receipt of regulatory approvals. Pursuant to the Merger Agreement, Guidant has agreed to assume and perform the transaction agreement with Abbott prior to the closing of the Merger.

Item 9.01. Financial Statements and Exhibits

2.1 Agreement and Plan of Merger, dated as of January 25, 2006, among Boston Scientific Corporation, Galaxy Merger Sub, Inc. and Guidant Corporation.

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.

BOSTON SCIENTIFIC CORPORATION

By: /s/ Lawrence J. Knopf
Name: Lawrence J. Knopf
Title: Vice President and Assistant General Counsel

Dated: January 27, 2006