

EXHIBIT 3

EX-2.1 2 a06-3532_2ex2d1.htm PLAN OF ACQUISITION, REORGANIZATION, ARRANGEMENT,
LIQUIDATION OR SUCCESSION

Exhibit 2.1

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

Dated as of January 25, 2006

Among

BOSTON SCIENTIFIC CORPORATION,

GALAXY MERGER SUB, INC.

And

GUIDANT CORPORATION

AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of January 25, 2006, among BOSTON SCIENTIFIC CORPORATION, a Delaware corporation ("Parent"), GALAXY MERGER SUB, INC., an Indiana corporation and a wholly owned Subsidiary of Parent ("Sub"), and GUIDANT CORPORATION, an Indiana corporation (the "Company").

WHEREAS, the Company and Johnson & Johnson ("J&J") entered into an Agreement and Plan of Merger, dated as of December 15, 2004, amended and restated as of November 14, 2005 and further amended as of January 11, 2006 and January 13, 2006 (the "J&J Agreement");

WHEREAS, immediately prior to execution of this Agreement, the Company terminated the J&J Agreement in accordance with its terms;

WHEREAS, the Board of Directors of each of the Company and Sub has adopted, and the Board of Directors of Parent has approved, this Agreement and the merger of Sub with and into the Company (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement, whereby each issued and outstanding share of common stock, without par value, of the Company ("Company Common Stock"), other than shares of Company Common Stock directly owned by Parent, Sub or the Company, will be converted into the right to receive (a) a number of validly issued, fully paid and nonassessable shares of common stock, par value \$0.01 per share, of Parent ("Parent Common Stock") and (b) \$42.00 in cash, without interest;

WHEREAS, certain stockholders of Parent have entered into Voting Agreements with the Company, dated as of the date hereof, providing that, among other things, such stockholders will vote their shares of Parent Common Stock in favor of (i) an amendment to the Second Restated Certificate of Incorporation of Parent, as amended (the "Parent Certificate"), to increase the authorized number of shares of Parent Common Stock from 1,200,000,000 to 2,000,000,000 (the "Amendment") and (ii) the issuance of shares of Parent Common Stock to the shareholders of the Company pursuant to the terms of the Merger (the "Share Issuance"); and

WHEREAS, Parent, Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, and subject to the conditions set forth herein, the parties hereto agree as follows:

ARTICLE I

The Merger

SECTION 1.01. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Business Corporation Law of the State of Indiana (the "IBCL"), Sub shall be merged with and into the Company at the Effective Time. Following the Effective Time, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation in the Merger (the "Surviving

Corporation”) and shall succeed to and assume all the rights and obligations of Sub in accordance with the IBCL.

SECTION 1.02. Closing. The closing of the Merger (the “Closing”) will take place at 10:00 a.m., local time, on a date to be specified by the parties, which shall be no later than the second business day after satisfaction or (to the extent permitted by applicable Law) waiver of the conditions set forth in Article VI (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by applicable Law) waiver of those conditions), at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by Parent and the Company; provided, however, that if all the conditions set forth in Article VI shall no longer be satisfied or (to the extent permitted by applicable Law) waived on such second business day, then the Closing shall take place on the first business day on which all such conditions shall again have been satisfied or (to the extent permitted by applicable Law) waived unless another time is agreed to in writing by Parent and the Company. The date on which the Closing occurs is referred to in this Agreement as the “Closing Date”.

SECTION 1.03. Effective Time. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the parties shall file with the Secretary of State of the State of Indiana articles of merger (the “Articles of Merger”) executed and acknowledged by the parties in accordance with the relevant provisions of the IBCL and, as soon as practicable on or after the Closing Date, shall make all other filings or recordings required under the IBCL. The Merger shall become effective upon the filing of the Articles of Merger with the Secretary of State of the State of Indiana, or at such later time as Parent and the Company shall agree and shall specify in the Articles of Merger (the time the Merger becomes effective being the “Effective Time”).

SECTION 1.04. Effects of the Merger. The Merger shall have the effects set forth in Section 23-1-40-6 of the IBCL.

SECTION 1.05. Articles of Incorporation and By-laws. (a) The Articles of Incorporation of the Company (the “Company Articles”) shall be amended at the Effective Time to be in the form of Exhibit A and, as so amended, such Company Articles shall be the Restated Articles of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law.

(b) The By-laws of Sub, as in effect immediately prior to the Effective Time, shall be the By-laws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law.

SECTION 1.06. Directors. The directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

SECTION 1.07. Officers. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation until the earlier of their