CELGENE CORP /DE/
Form 10-Q
November 02, 2011
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark one)

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2011

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____to _____

Commission File Number 001-34912

CELGENE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**22-2711928**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
86 Morris Avenue, Summit, NJ	**07901**
(Address of principal executive offices)	(Zip Code)

(908) 673-9000

(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes þ No o

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes o No þ

At October 25, 2011, 443,930,657 shares of Common Stock, par value $.01 per share, were outstanding.

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PART I FINANCIAL INFORMATION

Item 1. Financial Statements.

CELGENE CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME

(Unaudited)

(In thousands, except per share amounts)

	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2011	2010	2011	2010
Revenue:				
Net product sales	$ 1,219,118	$ 885,656	$ 3,457,055	$ 2,468,164
Collaborative agreements and other revenue	3,766	2,241	16,468	7,165
Royalty revenue	26,853	22,214	84,650	78,728
Total revenue	1,249,737	910,111	3,558,173	2,554,057
Expenses:				
Cost of goods sold (excluding amortization of acquired intangible assets)	94,645	63,542	348,356	193,450
Research and development	356,839	253,547	1,163,837	800,965
Selling, general and administrative	303,303	228,281	911,207	655,522
Amortization of acquired intangible assets	75,044	46,540	214,181	135,201
Acquisition related (gains) charges and restructuring, net	(11,209)	7,495	(117,430)	20,193
Total costs and expenses	818,622	599,405	2,520,151	1,805,331
Operating income	431,115	310,706	1,038,022	748,726
Other income and expense:				
Interest and investment income, net	8,481	12,801	18,948	37,010
Equity in losses of affiliated companies	1,661	1,384	966	746
Interest expense	10,292	414	31,460	1,321
Other income (expense), net	(15,002)	8,453	(6,684)	7,130
Income before income taxes	412,641	330,162	1,017,860	790,799
Income tax provision	39,657	49,011	110,582	119,854
Net income	372,984	281,151	907,278	670,945
Less: Net loss attributable to non-controlling interest			694	
Net income attributable to Celgene	$ 372,984	$ 281,151	$ 907,972	$ 670,945

Net income per share attributable to Celgene:

Basic	$ 0.83	$ 0.61	$ 1.97	$ 1.46
Diluted	$ 0.81	$ 0.60	$ 1.94	$ 1.44
Weighted average shares:				
Basic	452,019	459,653	460,161	459,957
Diluted	459,530	466,332	467,052	467,137

See accompanying Notes to Consolidated Financial Statements

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CELGENE CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Unaudited)

(Dollars in thousands, except per share amounts)

	September 30, 2011	December 31, 2010
Assets		
Current assets:		
Cash and cash equivalents	$ 1,794,927	$ 1,351,128
Marketable securities available for sale	784,160	1,250,173
Accounts receivable, net of allowances of $25,293 and $13,104 at September 30, 2011 and December 31, 2010, respectively	888,168	706,429
Inventory	187,525	260,130
Deferred income taxes	152,365	151,779
Other current assets	242,937	275,005
Assets held for sale	52,462	348,555
Total current assets	4,102,544	4,343,199
Property, plant and equipment, net	490,192	509,919
Investment in affiliated companies	27,470	23,073
Intangible assets, net	2,920,012	3,248,498
Goodwill	1,896,283	1,896,344
Other assets	326,606	156,129
Total assets	$ 9,763,107	$ 10,177,162
Liabilities and Stockholders Equity		
Current liabilities:		
Short-term borrowings	$ 269,125	$
Accounts payable	98,405	94,465
Accrued expenses	640,247	592,336
Income taxes payable	10,078	11,423
Current portion of deferred revenue	13,626	16,362
Other current liabilities	132,946	309,214
Liabilities of disposal group	7,531	46,582
Total current liabilities	1,171,958	1,070,382
Deferred revenue, net of current portion	12,616	12,785
Income taxes payable	631,376	551,896
Deferred income taxes	786,046	882,870
Other non-current liabilities	278,705	416,173
Long-term debt, net of discount	1,277,316	1,247,584
Total liabilities	4,158,017	4,181,690
Commitments and Contingencies		
Equity:		

Preferred stock, $.01 par value per share, 5,000,000 shares authorized; none outstanding at September 30, 2011 and December 31, 2010				
Common stock, $.01 par value per share, 575,000,000 shares authorized; issued 485,070,329 and 482,164,353 shares at September 30, 2011 and December 31, 2010, respectively		4,851		4,822
Common stock in treasury, at cost; 39,654,766 and 11,776,036 shares at September 30, 2011 and December 31, 2010, respectively		(2,109,066)		(545,588)
Additional paid-in capital		6,618,937		6,350,240
Retained earnings		1,156,238		248,266
Accumulated other comprehensive loss		(65,870)		(73,767)
Total stockholders equity		5,605,090		5,983,973
Non-controlling interest				11,499
Total equity		5,605,090		5,995,472
Total liabilities and equity	$	9,763,107	$	10,177,162

See accompanying Notes to Consolidated Financial Statements

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CELGENE CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(Dollars in thousands)

	Nine-Month Periods Ended September 30,	
	2011	**2010**
Cash flows from operating activities:		
Net income	$ 907,278	$ 670,945
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation of long-term assets	53,051	38,880
Amortization	215,961	136,048
Allocation of pre-paid royalties	16,214	37,299
Provision (benefit) for accounts receivable allowances	3,375	(1,485)
Deferred income taxes	(101,510)	(36,854)
Impairment of acquired in-process research and development	118,000	
Change in value of contingent consideration	(122,547)	16,697
Share-based compensation expense	168,641	134,540
Equity in losses of affiliated companies	966	746
Share-based employee benefit plan expense	14,567	11,072
Unrealized change in value of foreign currency forward contracts	(30,004)	12,060
Realized (gain) loss on marketable securities available for sale	(1,616)	(12,576)
Other, net	(7,643)	3,155
Change in current assets and liabilities, excluding the effect of acquisitions:		
Accounts receivable	(188,503)	(158,899)
Inventory	73,776	(6,372)
Other operating assets	48,113	9,412
Assets held for sale, net	2,647	
Accounts payable and other operating liabilities	90,344	89,560
Income tax payable	80,119	25,002
Deferred revenue	(2,756)	7,481
Net cash provided by operating activities	1,338,473	976,711
Cash flows from investing activities:		
Proceeds from sales of marketable securities available for sale	1,814,974	3,774,568
Purchases of marketable securities available for sale	(1,327,244)	(2,564,876)
Payments for acquisition of business, net of cash acquired	(180,000)	(337,608)
Proceeds from the sale of non-core assets, net	93,185	
Capital expenditures	(90,559)	(59,138)
Investment in affiliated companies	(2,949)	(1,759)
Purchases (refunds) of investment securities	6,597	(14,020)
Other investing activities	(2,000)	
Net cash provided by investing activities	312,004	797,167
Cash flows from financing activities:		
Payment for treasury shares	(1,574,415)	(105,436)

Proceeds from short-term borrowing		404,843		
Principal repayments on short-term borrowing		(135,750)		
Net proceeds from exercise of common stock options and warrants		92,258		56,033
Excess tax benefit from share-based compensation arrangements		15,734		9,081
Net cash (used in) financing activities		(1,197,330)		(40,322)
Effect of currency rate changes on cash and cash equivalents		(9,348)		(3,743)
Net increase in cash and cash equivalents		443,799		1,729,813
Cash and cash equivalents at beginning of period		1,351,128		1,102,172
Cash and cash equivalents at end of period	$	1,794,927	$	2,831,985

See accompanying Notes to Consolidated Financial Statements

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CELGENE CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS - (Continued)

(Unaudited)

(Dollars in thousands)

	Nine-Month Periods Ended September 30,	
	2011	**2010**
Supplemental schedule of non-cash investing and financing activity:		
Contingent consideration issued in acquisition of Gloucester	$	$ 230,201
Change in net unrealized (gain) loss on marketable securities available for sale	$ (4,928)	$ (17,480)
Matured shares tendered in connection with stock option exercises	$ (16)	$ (8,236)
Supplemental disclosure of cash flow information:		
Interest paid	$ 2,026	$ 1,638
Income taxes paid	$ 79,159	$ 115,291

See accompanying Notes to Consolidated Financial Statements

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

1. Nature of Business and Basis of Presentation

Celgene Corporation and its subsidiaries (collectively Celgene or the Company) is a global biopharmaceutical company primarily engaged in the discovery, development and commercialization of innovative therapies designed to treat cancer and immune-inflammatory diseases. The Company is dedicated to innovative research and development which is designed to bring new therapies to market and is involved in research in several scientific areas that may deliver proprietary next-generation therapies, targeting areas such as intracellular signaling pathways in cancer and immune cells, immunomodulation in cancer and autoimmunity and placental cell, including stem and progenitor cell, research.

The Company s primary commercial stage products include REVLIMID®, VIDAZA®, THALOMID® (inclusive of Thalidomide Celgene® and Thalidomide Pharmion®), ABRAXANE® and ISTODAX®. Additional sources of revenue include a licensing agreement with Novartis Pharma AG, or Novartis, which entitles the Company to royalties on FOCALIN XR® and the entire RITALIN® family of drugs, the sale of services through its Cellular Therapeutics subsidiary and other licensing agreements.

The consolidated financial statements include the accounts of Celgene Corporation and its subsidiaries. Certain entities obtained in the acquisition of Abraxis BioScience, Inc., or Abraxis, in October 2010 were determined to be non-core to the Company and a large portion were divested in April 2011 (see Note 3). Investments in limited partnerships and interests where the Company has an equity interest of 50% or less and does not otherwise have a controlling financial interest are accounted for by either the equity or cost method. The Company records net income or loss attributable to non-controlling interest in its Consolidated Statements of Income equal to the percentage of ownership interest retained in the respective operations by the non-controlling parties.

The preparation of these unaudited consolidated financial statements requires management to make estimates and assumptions that affect reported amounts and disclosures. Actual results could differ from those estimates. The Company is subject to certain risks and uncertainties related to product development, regulatory approval, market acceptance, scope of patent and proprietary rights, competition, technological change and product liability.

Interim results may not be indicative of the results that may be expected for the full year. In the opinion of management, these unaudited consolidated financial statements include all normal and recurring adjustments considered necessary for a fair presentation of these interim unaudited consolidated financial statements.

2. Summary of Significant Accounting Policies

The Company s significant accounting policies are described in Note 1 of the Notes to the Consolidated Financial Statements included in the Company s Annual Report on Form 10-K for the year ended December 31, 2010, or the 2010 Annual Report on Form 10-K.

New Accounting Pronouncements: In September 2011, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, No. 2011-08, Intangibles Goodwill and Other (Topic 350): Testing Goodwill for Impairment, or ASU 2011-08. The update simplifies how a company tests goodwill for impairment.

ASU 2011-08 allows a company the option to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Under that option, an entity would no longer be required to calculate the fair value of a reporting unit unless the entity determines, based on that qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount.

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

ASU 2011-08 is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is permitted. The adoption of ASU 2011-08 is not expected to have a material impact on the Company as the Company has only one reporting unit.

In June 2011, the FASB issued ASU No. 2011-05, Comprehensive Income (Topic 220), or ASU 2011-05. ASU 2011-05 was issued to improve the comparability, consistency and transparency of financial reporting and to increase the prominence of items reported in other comprehensive income. The guidance in ASU 2011-05 eliminates the option to present components of other comprehensive income as part of the statement of changes in stockholders equity and requires that all non-owner changes in stockholders equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. ASU 2011-05 will be effective for fiscal years and interim periods within those fiscal years beginning on or after December 15, 2011. The Company is currently evaluating the impact that the adoption of ASU 2011-05 will have on its consolidated financial statements.

In May 2011, the FASB issued ASU No. 2011-04, Fair Value Measurement (Topic 820), or ASU 2011-04. ASU 2011-04 was issued to improve the comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP, and International Financial Reporting Standards, or IFRS. The guidance in ASU 2011-04 explains how to measure fair value, but does not require additional fair value measurements and is not intended to establish valuation standards or affect valuation practices outside of financial reporting. ASU 2011-04 will be effective for fiscal years and interim periods within those fiscal years beginning on or after December 15, 2011. The Company is currently evaluating the impact that the adoption of ASU 2011-04 will have on its consolidated financial statements.

3. Acquisitions and Divestitures

Abraxis BioScience, Inc.

On October 15, 2010, or the Acquisition Date, the Company acquired all of the outstanding common stock of Abraxis in exchange for consideration valued at the Acquisition Date at approximately $3.205 billion, consisting of cash, stock and contingent value rights, or CVRs. The transaction, referred to as the Merger, resulted in Abraxis becoming a wholly owned subsidiary of the Company.

As discussed further under Contingent Value Rights below, a holder of a CVR is entitled to receive a *pro rata* portion of cash payments that the Company is obligated to pay to all holders of CVRs, which is determined by achievement of certain net sales and U.S. regulatory approval milestones. Potential cash payments to CVR holders range from no payment, if no regulatory milestones or net sales thresholds are met, to a maximum of $650.0 million in milestone payments plus payments based on annual net sales levels if all milestones are met at the earliest target dates and annual net sales exceed threshold amounts.

The Merger has been accounted for using the acquisition method of accounting which requires that most assets acquired and liabilities assumed be recognized at their fair values as of the Acquisition Date and requires the fair value of acquired in-process research and development, or IPR&D, to be classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. A preliminary purchase price allocation has been made and amounts for certain income tax attributes are subject to change pending the filing of Abraxis pre-acquisition tax returns. The Company does not expect any material adjustments.

No adjustments were made during the nine-month period ended September 30, 2011 to the amounts initially recorded for the assets acquired and liabilities assumed as of the Acquisition Date. The amounts recognized will be finalized as the information necessary to complete the analyses is obtained, but no later than one year from the Acquisition Date.

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Sale of Non-core Assets

The purchase of Abraxis included a number of assets that are not associated with nab® technology or ABRAXANE®. These assets, or non-core assets, consisted of a number of subsidiaries, tangible assets, equity investments, joint venture partnerships and assets that supported research and sales of products not directly related to the nab® technology or ABRAXANE®. At the time of acquisition, the Company committed to a plan to divest certain non-core assets and they were classified on the Consolidated Balance Sheets as of December 31, 2010 as assets held for sale and the associated liabilities were classified as liabilities of disposal group. In April 2011, the Company sold these non-core assets to various entities that are owned or controlled by Dr. Patrick Soon-Shiong, the former majority shareholder and executive chairman of Abraxis.

The Company received cash consideration of $110.0 million, 10% equity ownership in Active Biomaterials, LLC, which is an entity that was formed with certain of the non-core assets with revenue-producing potential, and a future royalty stream based on net sales of certain products of Active Biomaterials, LLC. The royalties, which commence in 2014 at the earliest and are not to exceed an annual amount of $128.0 million, will be calculated based on a range of between 10% and 12.5% of net sales of certain future products. Dr. Patrick Soon-Shiong holds an option to purchase the 10% equity ownership in Active Biomaterials, LLC from the Company for a price of $15.0 million at any time prior to April 2013. The Company recorded the equity ownership at its fair market value of $14.0 million based on the present value of the amount likely to be received upon exercise of the purchase option. The Company recorded the future royalty stream as an asset and assigned a value of $170.0 million based on its fair market value calculated as the present value of estimated future net cash flows. The sale of the non-core assets resulted in a gain of $2.9 million which was included in the Consolidated Statements of Income, in other income (expense), net. The Company s policy is to present gains and losses from sales of businesses as other income or expense.

Assets Held For Sale

The remaining balances in the assets held for sale and liabilities of disposal group line items on the Consolidated Balance Sheets at September 30, 2011 relate to two facilities that were acquired in the purchase of Abraxis. The Company intends to sell these assets as it rationalizes certain manufacturing facilities. No material gain or loss is expected to result from the sale.

Contingent Value Rights

In connection with the Merger on October 15, 2010, CVRs were issued under a Contingent Value Rights Agreement, or CVR Agreement, entered into between Celgene and American Stock Transfer & Trust Company, LLC, as trustee. The CVRs are registered for trading on the NASDAQ Global Select Market under the symbol CELGZ. The fair value of the CVRs and the liability of the Company related to payments under the CVR Agreement are subject to fluctuation based on trading prices for the publicly traded CVRs. Subsequent to the Acquisition Date, the Company has measured the contingent consideration represented by the CVRs at fair value with changes in fair value recognized in operating earnings.

Each holder of a CVR is entitled to receive a *pro rata* portion, based on the number of CVRs then outstanding, of each of the following contingent cash payments:

- *Milestone Payment #1.* $250.0 million upon U.S. Food and Drug Administration, or FDA, approval of ABRAXANE® for use in the treatment of non-small cell lung cancer, or NSCLC, if such approval permits the Company to market ABRAXANE® with FDA approval that includes a progression-free survival, or PFS, claim, but only if this milestone is achieved no later than the fifth anniversary of the Merger.

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

- *Milestone Payment #2.* $400.0 million (if achieved no later than April 1, 2013) or $300.0 million (if achieved after April 1, 2013 and before the fifth anniversary of the Merger) upon FDA approval of ABRAXANE® for use in the treatment of pancreatic cancer, if such approval permits the Company to market ABRAXANE® with FDA approval that includes an overall survival claim.

- *Net Sales Payments.* For each full one-year period ending December 31 during the term of the CVR Agreement, which we refer to as a net sales measuring period (with the first net sales measuring period beginning January 1, 2011 and ending December 31, 2011):

- 2.5% of the net sales of ABRAXANE® and the Abraxis pipeline products that exceed $1.0 billion but are less than or equal to $2.0 billion for such period, plus

- an additional amount equal to 5% of the net sales of ABRAXANE® and the Abraxis pipeline products that exceed $2.0 billion but are less than or equal to $3.0 billion for such period, plus

- an additional amount equal to 10% of the net sales of ABRAXANE® and the Abraxis pipeline products that exceed $3.0 billion for such period.

No payments will be due under the CVR Agreement with respect to net sales of ABRAXANE® and the Abraxis pipeline products after December 31, 2025, which we refer to as the net sales payment termination date, unless net sales for the net sales measuring period ending on December 31, 2025 are equal to or greater than $1.0 billion, in which case the net sales payment termination date will be extended until the last day of the net sales measuring period subsequent to December 31, 2025 during which net sales of ABRAXANE® and the Abraxis pipeline products are less than $1.0 billion or, if earlier, December 31, 2030.

The final results for the ongoing ABRAXANE® Phase III study in NSCLC, or the NSCLC study, were presented at a major scientific congress in June 2010. These results showed that the primary endpoint of the study, response rate, was met and was statistically significant. An interim analysis for the secondary endpoint of PFS was announced in January 2011 and, although not statistically significant, did not show a negative trend against the comparator. On June 4, 2011, the Company announced that the final analysis for both PFS and Overall Survival, or OS, was completed during the second quarter of 2011 and the PFS remained consistent with the interim analysis. In addition, the final OS, similar to the final PFS analysis, did not show a negative trend against the comparator. The Special Protocol Assessment, or SPA, as agreed with the FDA, states that the NSCLC study must reach the primary endpoint of response rate, which has been met, as well as showing that the secondary endpoints of both PFS and OS are not negative, *i.e.* no detrimental effect on PFS or OS for the ABRAXANE® group of the NSCLC study. Accordingly, because the final PFS results were not statistically significant, this reduced the probability that a payment will be made for Milestone Payment #1 under the CVR Agreement that the Company entered into with the former shareholders of Abraxis. Milestone Payment #1 relates to FDA approval of ABRAXANE® for the treatment of NSCLC that permits the Company to market ABRAXANE® with FDA approval that includes a PFS claim, which the Company believes is now unlikely to be achieved based on the foregoing data. The market value

of the publicly traded CVRs, which represents the fair value of the Company s liability for all potential payments under the CVR Agreement, decreased from $212.0 million at December 31, 2010 to $75.3 million at September 30, 2011. The reduction in the fair value of the Company s liability was recognized as a gain of $136.7 million in acquisition-related (gains) charges and restructuring, net on the Consolidated Statements of Income for the nine-month period ended September 30, 2011, including a gain of $13.4 million for the three-month period ended September 30, 2011.

In the first quarter of 2011, the Company evaluated the value assigned to the IPR&D from Abraxis and determined that, based on a lower level of probable sales than that estimated at the time of the Merger for sales of ABRAXANE® for NSCLC with FDA approval that includes a PFS claim, the fair value of the

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

IPR&D acquired from Abraxis has fallen below the $1.290 billion recorded at the time of acquisition. An impairment charge included in research and development on the accompanying Consolidated Statements of Income in the amount of $118.0 million was recorded in the three-month period ended March 31, 2011 to reduce the value of the IPR&D asset acquired from Abraxis to its revised current fair value of $1.172 billion at September 30, 2011.

Gloucester Pharmaceuticals, Inc.

On January 15, 2010, the Company acquired all of the outstanding common stock and stock options of Gloucester Pharmaceuticals, Inc., or Gloucester. The assets acquired and liabilities assumed of Gloucester were recorded as of the acquisition date, at their respective fair values, and consolidated with those of the Company. Gloucester s results of operations are included in the Company s consolidated financial statements from the date of acquisition.

The Company paid $338.9 million in cash before milestone payments with potential additional future payments of up to $300.0 million in contingent regulatory milestone payments. As part of the consideration for the Gloucester acquisition, the Company is contractually obligated to pay certain consideration resulting from the outcome of future events. The Company updates its assumptions each reporting period based on new developments and records such amounts at fair value until such consideration is satisfied.

In June 2011, the FDA granted accelerated approval of the Supplemental New Drug Application for ISTODAX® for the treatment of peripheral T-cell lymphoma, or PTCL, in patients who have received at least one prior therapy. This FDA approval was the triggering event for the payment of one of the two contingent regulatory milestone payments associated with the Gloucester acquisition. The Company made a payment of $180.0 million to the former shareholders of Gloucester in July 2011 in satisfaction of this milestone payment requirement. The single remaining contingent milestone payment is for a $120.0 million cash payment upon the marketing approval for the European Union PTCL.

Subsequent to the acquisition date, the Company has measured the contingent consideration arrangement at fair value for each period with changes in fair value recognized in operating earnings. Changes in fair values reflect new information about the IPR&D assets and the passage of time. In the absence of new information, changes in fair value reflect only the passage of time as development work towards the achievement of the milestones progresses, and will be accrued based on an accretion schedule. At September 30, 2011, the balance of the contingent consideration, which reflects the fair value of the single remaining contingent milestone payment, was $87.1 million, and is included in other non-current liabilities.

4. Restructuring

The Company has incurred costs from restructuring activities related to the October 15, 2010 acquisition of Abraxis. Restructuring costs include employee termination costs, contract termination fees and facility closing costs. Employee termination costs are generally recorded when the actions are probable and estimable and include accrued severance benefits and health insurance continuation, many of which may be paid out during periods after termination of employment.

The following tables summarize the restructuring expenses and changes in the restructuring liability related to the Abraxis acquisition during the three- and nine-month periods ended September 30, 2011:

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2011	2010	2011	2010
Employee termination benefits	$ 86	$	$ 2,312	$
Contract termination fees			1,304	
Facility closing costs	113		1,858	
Total restructuring expense	$ 199	$	$ 5,474	$

	Balance December 31, 2010	Expense Recognized	Payments	Balance September 30, 2011	Cumulative Payments
Employee termination benefits	$ 14,881	$ 2,312	$ 12,047	$ 5,146	$ 13,280
Contract termination fees		1,304	1,304		1,304
Facility closing costs		1,858	1,066	792	1,066
Total restructuring costs	$ 14,881	$ 5,474	$ 14,417	$ 5,938	$ 15,650

The Company does not expect to incur material additional restructuring expenses related to the acquisition of Abraxis. Future cash payments related to the restructuring activity are estimated to be approximately $1.3 million in 2011, $4.3 million in 2012 and $0.3 million in 2013.

5. Earnings Per Share

	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2011	2010	2011	2010
Net income attributable to Celgene	$ 372,984	$ 281,151	$ 907,972	$ 670,945
Weighted-average shares (in thousands):				
Basic	452,019	459,653	460,161	459,957
Effect of dilutive securities:				
Options, restricted stock units, warrants and other incentives	7,511	6,679	6,891	7,180
Diluted	459,530	466,332	467,052	467,137
Net income per share:				
Basic	$ 0.83	$ 0.61	$ 1.97	$ 1.46
Diluted	$ 0.81	$ 0.60	$ 1.94	$ 1.44

The total number of potential shares of common stock excluded from the diluted earnings per share computation because their inclusion would have been anti-dilutive was 21,682,141 and 24,472,208 shares for the three-month periods ended September 30, 2011 and 2010, respectively. The total number of potential common shares excluded for the nine-month periods ended September 30, 2011 and 2010 was 26,846,063 and 23,624,432, respectively.

The Company s Board of Directors has approved an open-ended common share repurchase program up to an aggregate of $4.0 billion of the Company s common stock. As of September 30, 2011, an aggregate of 35,676,097 shares of common stock were repurchased under the program, including 15,549,400 shares of common stock repurchased during the three-month period ended September 30, 2011.

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CELGENE CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

6. Comprehensive Income

A summary of comprehensive income, net of tax, is summarized as follows:

	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2011	2010	2011	2010
Net income	$ 372,984	$ 281,151	$ 907,972	$ 670,945
Other comprehensive income:				
Marketable securities:				
Net unrealized gains on marketable securities available for sale, net of tax	124	4,682	4,928	17,681
Reclassification adjustment for (gains) and losses included in net income	(3,072)	(6,560)	(1,783)	(12,432)
Total other comprehensive (gains) losses related to marketable securities available for sale, net of tax	(2,948)	(1,878)	3,145	5,249
Net unrealized gains (losses) related to cash flow hedges, net of tax	52,789	(118,501)	(1,356)	1,663