

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-Q/A

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

For the quarterly period ended September 30, 1996

OR

☐ 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: 0-23490

VIVUS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE

94-3136179

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer identification Number)

545 MIDDLEFIELD ROAD, SUITE 200 MENLO PARK, CA 94025

(Address of Principal Executive Offices) (Zip Code)

(415) 325-5511

(Registrant's Telephone Number, Including Area Code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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 ☐ No

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

At October 22, 1996, 16,189,507 shares of common stock were outstanding.

## PART II: OTHER INFORMATION

## Item 1. Legal Proceedings

A former consultant to the Company has claimed that he is the inventor of certain technology disclosed in two of the Company's patents. The former consultant further claims that the Company defrauded him by allegedly failing to inform him that it intended to use and patent this technology and by failing to compensate him for the technology in the manner allegedly promised. On May 28, 1996, the Company filed a complaint for declaratory judgment against the former consultant in the United States District Court for the Northern District of California, which seeks a declaration from the court that the former consultant is not an inventor of any of the technology disclosed in the patent. On July 17, 1996, the former consultant filed a lawsuit which seeks to have two of the Company's patents declared invalid on the grounds that they fail to list him as an inventor. On September 16, 1996, the Court dismissed the consultant's lawsuit, and ordered the consultant to refile his claims or counterclaims to the action initiated by the Company on May 28, 1996. The consultant filed his counterclaim on September 26, 1996. In a separate matter, on April 10, 1996, the licensors in an agreement by which the Company acquired a patent license filed a lawsuit in a Texas State court that alleges that they were defrauded in connection with the renegotiation of the license agreement between the Company and the licensors. On May 8, 1996, the action was removed to the United States District Court for the Western District of Texas. In addition to monetary damages, the licensors seek to return to the terms of the original license agreement. The Company has conducted a review of the circumstances surrounding these two matters and believes that the allegations are without merit. Although the Company believes that it should prevail, the uncertainties inherent in litigation prevent the Company from giving any assurances about the outcome of such litigation.

## Item 4. Submission of Matters to a Vote of Security Holders.

None.

## Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits (in accordance with Item 601 of Regulation S-K)

- \*\*\*\*\* 3.1 Certificate of Incorporation of the Registrant
- \*\*\*\*\* 3.2 Bylaws of the Registrant
- \* 4.1 Specimen Common Stock Certificate of the Registrant
- \* 4.2 Registration Rights as amended
- \*\* 4.3 Form of Agreement Not to Sell by and between the

Registrant and certain shareholders and option holders

- \* 4.4 Form of Preferred Stock Purchase Warrant issued by the Registrant to Invemed Associates, Inc., Frazier Investment Securities, L.P., and Cristina H. Kepner
- # 4.5 Amended and Restated Preferred Shares Rights Agreement, dated as of June 18, 1996 by and between Vivus, Inc. and First Interstate Bank of California, including the Certificate of Determination, the form of Rights Certificate and the Summary of Rights attached thereto as Exhibits A, B, and C, respectively.
- \*+10.1 Assignment Agreement by and between Alza Corporation and the Registrant dated December 31, 1993
- \*+10.2 Memorandum of Understanding by and between Ortho Pharmaceutical Corporation and the Registrant dated February 25, 1992
- \*10.3 Assignment Agreement by and between Ortho Pharmaceutical Corporation and the Registrant dated June 9, 1992
- \*+10.4 License Agreement by and between Gene A. Voss, M.D., Allen C. Eichler, M.D., and the Registrant dated December 28, 1992
- \*+10.5A License Agreement by and between Ortho Pharmaceutical Corporation and Kjell Holmquist AB dated June 23, 1989
- \*+10.5B Amendment by and between Kjell Holmquist AB and the Registrant dated July 3, 1992
- \*10.5C Amendment by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
- \*+10.5D Stock Purchase Agreement by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
- \*+10.6A License Agreement by and between Amsu, Ltd., and Ortho Pharmaceutical Corporation dated June 23, 1989
- \*+10.6B Amendment by and between Amsu, Ltd., and the Registrant dated July 3, 1992
- \*10.6C Amendment by and between Amsu, Ltd., and the Registrant dated April 22, 1992
- \*+10.6D Stock Purchase Agreement by and between Amsu, Ltd., and the Registrant dated July 10, 1992
- \*10.7 Supply Agreement by and between Paco Pharmaceutical Services, Inc., and the Registrant dated November 10, 1993
- \*+10.8 Agreement by and among Pharmatech, Inc., Spolana Chemical Works AS, and the Registrant dated June 23, 1993
- \*10.9 Master Services Agreement by and between the Registrant and Teknekron Pharmaceutical Systems dated August 9, 1993
- \*10.10 Lease by and between McCandless-Triad and the Registrant dated November 23, 1992, as amended

- \*\*\*10.11 Form of Indemnification Agreements by and among the Registrant and the Directors and Officers of the Registrant
- \*\*10.12 1991 Incentive Stock Plan and Form of Agreement, as amended
- \*10.13 1994 Director Option Plan and Form of Agreement
- \*10.14 Form of 1994 Employee Stock Purchase Plan and Form of Subscription Agreement
- \*10.15 Stock Restriction Agreement between the Company and Virgil A. Place, M.D. dated November 7, 1991
- \*10.16 Stock Purchase Agreement between the Company and Leland F. Wilson dated June 26, 1991, as amended
- \*10.17 Letter Agreement between the Registrant and Leland F. Wilson dated June 14, 1991 concerning severance pay
- \*10.18 Letter Agreement between the Registrant and Paul Doherty dated January 26, 1994 concerning severance pay
- \*\*10.19 Guaranteed Maximum Price Contract by and between the Registrant and Marshall Contractors, Inc. dated January 27, 1995
- \*\*10.20 Sub-lease by and among the Registrant, Argonaut Technologies, Inc., ESCAgenetics Corp. and Tanklage Construction Co. dated March 13, 1995
- \*\*\*\*+10.21 Distribution Services Agreement between the Registrant and Synergy Logistics, Inc. (a wholly- owned subsidiary of Cardinal Health, Inc.) dated February 9, 1996
- \*\*\*\*+10.22 Manufacturing Agreement between the Registrant and CHINOIN Pharmaceutical and Chemical Works Co., Ltd. dated December 20, 1995
- \*\*\*\*\*10.23 Distribution and Services Agreement between the Registrant and Alternate Site Distributors, Inc. dated July 17, 1996
- \*\*\*\*\*+10.24 Distribution Agreement made as of May 29, 1996 between the Registrant and Astra AB
- x10.25 Menlo McCandless Office Lease made as of August 30, 1996 by and between Registrant and McCandless - Triad
- x10.26 Sublease Agreement made as of August 22, 1996 by and between Registrant and Plant Research Technologies
- x11.1 Computation of net loss per share
- x27.1 Financial Data Schedule

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\* Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-75698.

\*\* Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-90390.

- \*\*\* Incorporated by reference to the same-numbered exhibit filed with the Registrant's Form 8-B filed with the Commission on June 24, 1996
- \*\*\*\* Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10Q for the quarter ended March 31, 1996.
- \*\*\*\*\* Incorporated by reference to the same numbered exhibit filed with the Registrant's Current Report on Form 8-K/A filed with the Commission on June 21, 1996.
- # Incorporated by reference to exhibit 99.1 filed with the Registrants Amendment No. 1 to Form 8-A filed with the Commission on June 24, 1996.
- \*\*\*\*\* Incorporated by reference to the same numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1996.
- x Incorporated by reference to the same numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996.
- + Confidential treatment granted.

(b) Reports on Form 8-K

None.

## SIGNATURES

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 thereunto duly authorized.

VIVUS, Inc.

Date: November 19, 1996  
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/s/ DAVID C. YNTEMA  
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David C. Yntema  
Chief Financial Officer

/s/ LELAND F. WILSON  
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Leland F. Wilson  
President and Chief  
Executive Officer