
**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)
April 26, 2013

VIVUS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-33389
(Commission File Number)

94-3136179
(IRS Employer
Identification No.)

**1172 CASTRO STREET
MOUNTAIN VIEW, CA 94040**
(Address of principal executive offices, including zip code)

(650) 934-5200
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

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 (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☒ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

(d) On April 26, 2013, the Board of Directors, or the Board, of VIVUS, Inc., or the Company or VIVUS, appointed Robert N. Wilson as a director of the Company. The Board has determined that Mr. Wilson is independent of the Company and its management as defined by the Securities and Exchange Commission and NASDAQ Stock Market, LLC. The Board has not yet determined on which committee(s) Mr. Wilson will serve.

Following Mr. Wilson's appointment to the Company's Board, Mr. Wilson received 20,000 restricted stock units, or RSUs, on April 26, 2013. Such RSUs vest as to one-fourth of the units on each anniversary date of grant over a period of four years so long as Mr. Wilson continues service to the Company on such dates.

From 1964 to 2003, Mr. Wilson served in various roles at Johnson & Johnson, a public healthcare company, including the Executive Committee from 1983 through 2003 and vice chairman of the board from 1988 through 2003. Since 2007, Mr. Wilson has also been Chairman of Mevion Medical Systems, Inc. (formerly Still River Systems), a medical device company. Since 2003, Mr. Wilson has served as a member of the board of Synta Pharmaceuticals Corporation, a public biopharmaceutical company, and a member of the board of Charles Schwab Corporation, a public brokerage and banking company. Since 1996, he has been a member of the board of Hess Corporation, a public oil and gas company. From 2004 to 2007, Mr. Wilson was also Chairman of Caxton Health Holdings, LLC, a healthcare-focused investment firm.

Our Board has concluded that Mr. Wilson should serve as a director because of the knowledge and extensive experience in the pharmaceutical industry that he brings to the Board. In addition, Mr. Wilson's significant experience on other publicly traded company boards of directors and board

committees provides him with an understanding of current corporate governance practices and trends and compensation matters that provides value to our Board.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

(a) In connection with Mr. Wilson's appointment as a director, the Board amended the Company's Amended and Restated Bylaws to increase the authorized number of directors from six to seven, effective as of April 26, 2013. A copy of Amendment No. 2 to the Amended and Restated Bylaws is attached hereto as Exhibit 3.1 and incorporated by reference into this Item 5.03.

Item 8.01. Other Events

On April 30, 2013, the Company issued a press release regarding Mr. Wilson's appointment to the Company's Board. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated by reference into this Item 8.01.

Important Additional Information

VIVUS, its directors and certain of its executive officers may be deemed to be participants in the solicitation of proxies from VIVUS stockholders in connection with the matters to be considered at VIVUS's 2013 Annual Meeting of Stockholders. VIVUS intends to file a proxy statement with the U.S. Securities and Exchange Commission (the "SEC") in connection with any such solicitation of proxies from VIVUS stockholders. INVESTORS AND STOCKHOLDERS ARE STRONGLY ENCOURAGED TO READ ANY SUCH PROXY STATEMENT AND ACCOMPANYING PROXY CARD AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION. Information regarding the identity of potential participants, and their direct or indirect interests, by security holdings or otherwise, will be set forth in the proxy statement and other materials to be filed with the SEC in connection with VIVUS's 2013 Annual Meeting of Stockholders. Information regarding the direct and indirect beneficial ownership of VIVUS's directors and executive officers in VIVUS securities is included in their SEC filings on Forms 3, 4 and 5, and additional information can also be found in VIVUS's Annual Report on Form 10-K for the year ended December 31, 2012, filed with the SEC on February 26, 2013, and in VIVUS's definitive proxy statement on Schedule 14A in connection with VIVUS's 2012 Annual Meeting of Stockholders, filed with the SEC on April 25, 2012. Stockholders will be able to obtain any proxy statement, any amendments or supplements to the proxy statement and other documents filed by VIVUS with the SEC for no charge at the SEC's website at www.sec.gov. Copies will also be available at no charge at the Investor Relations section of VIVUS's corporate website at www.vivus.com.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amendment No. 2 to the Amended and Restated Bylaws of the Registrant, as amended on April 26, 2013.
99.1	Press release issued by VIVUS, Inc. dated April 30, 2013.

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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 hereunto duly authorized.

VIVUS, INC.

By: /s/ Lee B. Perry
Lee B. Perry
Vice President and Chief Accounting Officer

Date: April 30, 2013

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EXHIBIT INDEX

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**AMENDMENT NO. 2
TO THE AMENDED AND RESTATED BYLAWS OF
VIVUS, INC.**

April 26, 2013

The Amended and Restated Bylaws of VIVUS, Inc., a Delaware corporation (the “**Company**”), initially adopted by the Board of Directors of the Company on May 16, 1996, as amended and restated on April 18, 2012 and as amended by Amendment No. 1 on February 20, 2013 (the “**Bylaws**”), are hereby amended by this Amendment No. 2 (this “**Amendment**”) pursuant to Article IX thereof as set forth below.

1. **Amendment.** Article III, Section 3.2 of the Bylaws is hereby amended by deleting such Article III, Section 3.2 in its entirety and replacing such Section with the following new Article III, Section 3.2:

“The board of directors shall be set at seven (7) members until changed by an amendment to this bylaw, duly adopted by the board of directors or by the stockholders, or by a duly adopted amendment to the certificate of incorporation. No reduction of the authorized number of directors shall have the effect of removing any director before that director’s term of office expires.”

2. **Miscellaneous.** Except as modified by this Amendment, which shall be effective as of the date first written above, the Bylaws shall remain in full force and effect.

IN WITNESS WHEREOF, to record adoption of this Amendment by the Board of Directors of the Company as of the date first written above, the Company has caused its authorized officer to execute this Amendment as of the date first written above.

By: /s/ Leland F. Wilson
Name: Leland F. Wilson
Title: Chief Executive Officer

**VIVUS, Inc.**

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VIVUS APPOINTS ROBERT N. WILSON TO BOARD OF DIRECTORS

MOUNTAIN VIEW, Calif., April 30, 2013 — VIVUS, Inc. (NASDAQ: VVUS) today announced the appointment of Robert N. Wilson, chairman of Mevion Medical Systems and former vice chairman of the Board of Directors of Johnson & Johnson, to its Board of Directors effective April 26, 2013. Mr. Wilson served in several roles at Johnson & Johnson, including the Executive Committee from 1983 through 2003 and vice chairman of the Board of Directors from 1988 through 2003. Mr. Wilson played a key role in the rapid growth of the pharmaceutical, device and diagnostic businesses within Johnson & Johnson. Mr. Wilson was also chairman of Caxton Health Holdings from 2004 through 2007, focusing on pharmaceutical and health technology investments.

“We are pleased to welcome a new, independent director of Bob’s caliber to the VIVUS Board of Directors,” said Mark B. Logan, chairman of the Board of Directors of VIVUS. “Bob is a highly qualified and experienced professional with proven leadership in the healthcare industry and invaluable expertise in pharmaceutical development, brand building and operations. We look forward to adding his unique perspective as we continue to successfully execute our commercialization strategy for Qsymia for the benefit of all VIVUS stockholders.”

Mr. Wilson is also a director of Hess Corporation, an explorer and producer of oil and gas, the Charles Schwab Corporation, a financial services company, and Synta Pharmaceuticals, a research-based pharmaceutical company with a focus in cancer therapies.

“I am excited to join the Board of VIVUS, a company with significant opportunities to fully commercialize its wholly-owned, next-generation therapies that address unmet needs of physicians and their patients,” said Mr. Wilson. “I look forward to sharing my experience and working closely with my fellow VIVUS directors, each of whom is a proven and respected business leader, to help enhance the value of the company.”

About VIVUS

VIVUS is a biopharmaceutical company commercializing and developing innovative, next-generation therapies to address unmet needs in obesity, sleep apnea, diabetes and sexual health. For more information about the company, please visit www.vivus.com.

Certain statements in this press release are forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995. These statements may be identified by the use of forward-looking words such as “anticipate,” “believe,” “forecast,” “estimate,” “expect,” “intend,” “likely,” “may,” “plan,” “potential,” “predict,” “opportunity” and “should,” among others. There are a number of factors that could cause actual events to differ materially from those indicated by such forward-looking statements. VIVUS does not undertake an obligation to update or revise any forward-looking statements. Investors should read the risk factors set forth in VIVUS’ Form 10-K for the year ending December 31, 2012, and periodic reports filed with the Securities and Exchange Commission.

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