

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934  
(Amendment No. 3)\*

VIVUS, Inc.

(Name of Issuer)

Common Stock, \$0.001 par value

(Title of Class of Securities)

928551100

(CUSIP Number)

Neal K. Stearns, Esq.  
First Manhattan Co.  
399 Park Avenue  
New York, New York 10022  
(212) 756-3300

With a copy to:  
Marc Weingarten and David Rosewater  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022

(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

April 15, 2013

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), Rule 13d-1(f) or Rule 13d-1(g), check the following box. ☐

(Page 1 of 8 Pages)

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

1	NAME OF REPORTING PERSON First Manhattan Co.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS AF	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION New York	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 5,348,179 shares of Common Stock
	8	SHARED VOTING POWER 3,855,195 shares of Common Stock
	9	SOLE DISPOSITIVE POWER 5,348,179 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 3,855,195 shares of Common Stock
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 9,203,374 shares of Common Stock	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 9.1%	
14	TYPE OF REPORTING PERSON BD; IA; PN	

1	NAME OF REPORTING PERSON First BioMed Management Associates, LLC	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS AF	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION New York	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 2,706,800 shares of Common Stock
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 2,706,800 shares of Common Stock
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 2,706,800 shares of Common Stock	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 2.7%	
14	TYPE OF REPORTING PERSON IA	

1	NAME OF REPORTING PERSON Herman Rosenman	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS PF	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION United States	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 5,000 shares of Common Stock
	8	SHARED VOTING POWER 0
	9	SOLE DISPOSITIVE POWER 5,000 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 5,000 shares of Common Stock	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 0.0%	
14	TYPE OF REPORTING PERSON IN	

This Amendment No. 3 ("Amendment No. 3") amends and supplements the statement on Schedule 13D filed with the Securities and Exchange Commission (the "SEC") on January 18, 2013 (the "Original Schedule 13D"), Amendment No. 1 to the Original Schedule 13D, filed with the SEC on March 8, 2013 ("Amendment No. 1") and Amendment No. 2 to the Original Schedule 13D, filed with the SEC on April 12, 2013 ("Amendment No. 2" and together with the Original Schedule 13D, Amendment No. 1 and this Amendment No. 3, the "Schedule 13D") with respect to the shares of common stock, \$0.001 par value (the "Common Stock"), of VIVUS, Inc., a Delaware corporation (the "Issuer"). Capitalized terms used herein and not otherwise defined in this Amendment No. 3 have the meanings set forth in the Schedule 13D. This Amendment No. 3 amends Items 3, 4, 5 and 7 as set forth below.

**Item 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION**

Item 3 of the Schedule 13D is hereby amended and restated in its entirety as follows:

The shares of Common Stock referred to in Item 5 as beneficially owned by First Manhattan were purchased by the entities listed therein for an aggregate consideration equal to \$98,496,221. The source of the funds used to acquire the Common Stock reported herein as beneficially owned by First Manhattan is the working capital of the pooled investment vehicles managed by FMC or FBMA and the available funds in the Accounts (as defined in Item 5). An aggregate of 58,800 of such shares held by certain of the Accounts are held in commingled margin accounts, which may extend margin credit to such Accounts from time to time, subject to applicable federal margin regulations, stock exchange rules and credit policies. In such instances, the positions held in the margin accounts are pledged as collateral security for the repayment of debit balances in the accounts. The margin accounts bear interest at a rate based upon the broker's call rate from time to time in effect. Because other securities are held in the margin accounts, it is not possible to determine the amounts, if any, of margin used to purchase such shares of Common Stock held by certain of the Accounts as reported herein.

Approximately \$53,054 in the aggregate was used to purchase the Common Stock reported herein as beneficially owned by Mr. Rosenman. The source of the funds used to acquire the Common Stock reported herein as beneficially owned by Mr. Rosenman is the personal funds of Mr. Rosenman and none of the funds used to purchase such Common Stock were provided through borrowings of any nature.

**Item 4. PURPOSE OF TRANSACTION**

Item 4 of the Schedule 13D is hereby amended and supplemented by the addition of the following:

On April 15, 2013, outside legal counsel to FMC sent a letter to the Issuer's counsel in response to a second request from the Issuer's counsel that each of the individuals nominated by FMC (the "Nominees") for election to the board of directors of the Issuer (the "Board") at the Issuer's 2013 annual meeting of stockholders (the "Annual Meeting") submit to interviews by the Nominating and Governance Committee of the Board. The letter reiterated FMC's willingness to have the Nominating and Governance Committee interview the Nominees. However, the letter expressed FMC's continuing concern that such a request could be used as a tactic to delay the Annual Meeting, noting that the Issuer had failed to commit to holding the Annual Meeting no later than June 30, 2013 and the Nominating and Governance Committee had failed to commit to complete the requested interview process by April 21, 2013, as FMC had requested. The letter reiterated FMC's requests, expressed FMC's belief as to the importance of a timely Annual Meeting in order to resolve the uncertainty surrounding the Board's composition, and noted that the Issuer has held its annual meeting in every one of the last sixteen years prior to June 30. A copy of the April 15 response letter is attached as Exhibit 7 to the Schedule 13D and is incorporated by reference herein.

**Item 5. INTEREST IN SECURITIES OF THE ISSUER**

Paragraphs (a) and (c) of Item 5 of the Schedule 13D are hereby amended and restated in their entirety as follows:

(a) The aggregate number and percentage of shares of Common Stock to which this Schedule 13D relates is 9,208,374 shares of Common Stock, constituting approximately 9.1% of the Issuer's currently outstanding Common Stock. Share ownership is reported as of the close of business on April 15, 2013. The aggregate number and percentage of shares of Common Stock reported herein are based upon the 100,660,029 shares of Common Stock outstanding as of February 19, 2013, as reported in the Issuer's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed with the SEC on February 26, 2013.

FMC may be deemed to beneficially own an aggregate of 9,203,374 shares of Common Stock, or approximately 9.1% of the outstanding Common Stock, which shares include (i) 3,353,275 shares of Common Stock, or approximately 3.3% of the outstanding Common Stock, directly held by First Health, L.P., First Health Limited and First Health Associates, L.P., pooled investment vehicles for which FMC acts as the investment advisor; (ii) 2,706,800 shares of Common Stock, or approximately 2.7% of the outstanding Common Stock, directly held by First BioMed, L.P. and First BioMed Portfolio, L.P., pooled investment vehicles for which FBMA acts as the investment advisor; and (iii) 3,143,299 shares of Common Stock, or approximately 3.1% of the outstanding Common Stock, held by (x) certain investment advisory accounts for which FMC acts as the investment advisor (the "Investment Accounts"), (y) discretionary brokerage accounts for which certain portfolio managers of FMC have discretionary authority (the "Brokerage Accounts"), and (z) accounts held and managed by partners and employees of FMC, including 500,000 shares of Common Stock held in Dr. Colin's personal account and 42,000 shares of Common Stock held by trusts established for the benefit of Dr. Colin's family members (the "Employee Accounts" and together with the Investment Accounts and Brokerage Accounts, the "Accounts").

FBMA may be deemed to beneficially own an aggregate of 2,706,800 shares of Common Stock, or approximately 2.7% of the outstanding Common Stock, which shares are directly held by First BioMed, L.P. and First BioMed Portfolio, L.P., pooled investment vehicles for which FBMA acts as the investment advisor.

Mr. Rosenman may be deemed to beneficially own an aggregate of 5,000 shares of Common Stock, or approximately 0.0% of the outstanding Common Stock. Such shares of Common Stock are held in an Individual Retirement Account for the benefit of Mr. Rosenman.

For purposes of the Schedule 13D, the term "First Manhattan" refers to FMC, First Health, L.P., First Health Limited, First Health Associates, L.P., FBMA, First BioMed, L.P., First BioMed Portfolio, L.P. and the Accounts, collectively.

(c) Schedule A hereto (which is incorporated by reference in this Item 5 as if restated in full herein) sets forth all transactions with respect to the shares of Common Stock effected since the filing of Amendment No. 2.

**Item 7. MATERIAL TO BE FILED AS EXHIBITS**

Item 7 of the Schedule 13D is hereby amended and supplemented by the addition of the following:

<u>Exhibit</u>	<u>Description</u>
7	Letter, dated April 15, 2013

**SIGNATURES**

After reasonable inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: April 17, 2013

**FIRST MANHATTAN CO.**

By FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns

Name: Neal K. Stearns

Title: Managing Member

**FIRST BIOMED MANAGEMENT ASSOCIATES, LLC**

By FIRST MANHATTAN CO., Co-Managing Member

By FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns

Name: Neal K. Stearns

Title: Managing Member

By: /s/ Herman Rosenman

Herman Rosenman

**Schedule A**

The following table sets forth all transactions with respect to the shares effected since the filing of Amendment No. 2 by any of the Reporting Persons. Except as otherwise noted, all such transactions in the table were effected in the open market, and the table includes commissions paid in per share prices.

**First Manhattan**

<u>Date of Transaction</u>	<u>Shares Purchased (Sold)</u>	<u>Price per Share (\$)</u>
04/15/2013	8,600	11.110
04/15/2013	7,500	11.141
04/15/2013	5,500	11.151



**Schulte Roth & Zabel LLP**

919 Third Avenue  
New York, NY 10022  
212.756.2000  
212.593.5955 fax  
www.srz.com

David E. Rosewater  
212.756.2208

Writer's E-mail Address  
David.Rosewater@srz.com

April 15, 2013

**Via Electronic Mail and FedEx**

Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
Att: Joseph E. Gilligan, Esq.

Re: Nomination of Directors to the Board of VIVUS, Inc.

Dear Mr. Gilligan:

I am writing in response to your letter dated April 12, 2013 (the "April 12 Letter") with respect to the request by the Nominating and Governance Committee (the "Committee") of the board of directors (the "Board") of VIVUS, Inc. (the "Company") that the candidates (the "Nominees") nominated by an affiliate of our client, First Manhattan Co. ("FMC"), for election to the Board at the Company's 2013 annual meeting of stockholders (the "Annual Meeting") submit to interviews by the Committee.

As I indicated in my previous letter, while FMC is willing to make the Nominees available for interview by the Committee, and to have them complete the requested questionnaires, it is concerned that the request was not made in good faith but rather as part of a plan to delay the Annual Meeting and disrupt the stockholders' exercise of their right to select a board of their choosing. That is the reason we asked that the Board publicly commit to holding the meeting on a specified date no later than June 30, 2013, and that the Committee complete the interview process by April 21, 2013. Their refusals to do so has only heightened our concern about the bona fides of the request for interviews.

Your letter indicates that the Board is "fully aware" of the provisions of Section 211 of the Delaware General Corporation law, and that it is the Board's "current intention" to schedule the 2013 meeting within the 13 month period referred to in that Section. As you and the Board must be aware, Section 211 does not require that a company hold its annual meeting within 13 months of its prior meeting--it simply states that if a company fails to do so, then a stockholder can ask the Chancery Court to order it to hold the meeting. The Board could change its "current intent" tomorrow.

FMC believes it is particularly important, and in the stockholders' best interests, that the Annual Meeting be held on a timely basis this year. Doing so will resolve the uncertainty around the board's composition and will allow the new board to promptly address the Company's strategic direction in light of its continuing cash burn and the expected near-term introduction of a drug which will directly compete with Qsymia. We note that the Company has held its annual meeting in every one of the last sixteen years prior to June 30, and in several cases held it much closer to the "third Tuesday in May" default date in its bylaws. There certainly is no reasonable justification for delay beyond June 30 in this critical year.

Your letter further indicates that the Committee "is actively evaluating candidates", "intends" to act "expeditiously" and has a "goal" of completing its review "in the next several weeks". While these aspirational statements may sound promising, the fact is that your response, in reality, is an abject refusal to commit to a timeframe.

FMC believes that the Board and the Committee have refused to commit to a firm date for the Annual Meeting and for completion of the interviews because they are engaged in a desperate search for board nominees, other than the FMC Nominees, that the stockholders might find more palatable than the incumbent directors, and the Board and the Committee do not know how long the search will take. FMC is unsympathetic, having already identified its very highly qualified nominees.

Notwithstanding its serious reservations, FMC continues to be willing to submit its nominees for interview by the Nominating Committee, provided that the Company publicly and firmly commit to a specified meeting date no later than June 30, 2013, and that the Committee firmly commit to a near-term date for completion of the interview process.

Very truly yours,

/s/ David Rosewater

---

David E. Rosewater

cc: Linda M. Dairiki Shortliffe, M.D.  
Chair, Nominating and Governance Committee of VIVUS, Inc.  
John L. Slebir, Esq.  
Vice President, Business Development and General Counsel of VIVUS, Inc.  
Michael James Astrue  
Jon C. Biro  
Samuel F. Colin  
Johannes J.P. Kastelein  
David York Norton  
Herman Rosenman  
Rolf Bass  
Melvin L. Keating