

Form **8937**
 (December 2017)
 Department of the Treasury
 Internal Revenue Service

Report of Organizational Actions Affecting Basis of Securities

OMB No. 1545-0123

▶ See separate instructions.

Part I Reporting Issuer

1 Issuer's name VIVUS, INC		2 Issuer's employer identification number (EIN) 94-3136179	
3 Name of contact for additional information Mark Oki	4 Telephone No. of contact (650) 934-5268	5 Email address of contact oki@vivus.com	
6 Number and street (or P.O. box if mail is not delivered to street address) of contact 900 E. HAMILTON AVENUE SUITE 550		7 City, town, or post office, state, and ZIP code of contact CAMPBELL, CA 95008	
8 Date of action 09/10/2018		9 Classification and description Common Stock	
10 CUSIP number 928551-308	11 Serial number(s)	12 Ticker symbol VVUS	13 Account number(s)

Part II Organizational Action Attach additional statements if needed. See back of form for additional questions.

14 Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action ▶ On September 10, 2018, Vivus, Inc. (the "Company") effected a one (1) for ten (10) reverse stock split of its common stock. Effective on that date, every ten (10) shares of the Company's issued and outstanding stock were automatically converted into one (1) issued and outstanding share of the Company's common stock. Shareholders are not entitled to fractional shares. Any fractional shares resulting from the reverse stock split will be rounded up to the nearest whole share.

15 Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis ▶ The transaction is intended to qualify as an Internal Revenue Code Section ("IRC") Section 368(a)(1)(E) reorganization. The tax treatment is based upon IRC Sections 354, 358 and 368. Vivus common stockholders should not recognize income, gain, or loss for U.S. federal income tax purposes pursuant to IRC Section 354. Tax basis calculations resulting from the reverse stock split are governed by IRC Section 358.

16 Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates ▶ Common stockholders are required to allocate the aggregate tax basis in their Vivus common stock held immediately prior to the reverse stock split among the common shares held immediately following the reverse stock split.

Part II Organizational Action (continued)

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based above. See Item 15

18 Can any resulting loss be recognized? No, a loss cannot be recognized.

19 Provide any other information necessary to implement the adjustment, such as the reportable tax year The reportable tax year is the 2018 calendar year.

Sign Here
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.
Signature Mark Oki Date 9/12/2018
Print your name Mark Oki Title Chief Financial Officer

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Jill Marie Harding	<i>J. Harding</i>	9/12/18		P01395490
	Firm's name	Firm's EIN			
	Alvarez & Marsal Taxand LLC	20-1157630			
Firm's address	Phone no.				
84 S. First Street, San Jose, California 95113		415-490-2279			

Send Form 8937 (including accompanying statements) to: Department of the Treasury, Internal Revenue Service, Ogden, UT 84201-0054