

SCHEDULE 14A
Consent Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934 (Amendment No. __)

Filed by the Registrant ☐

Filed by a Party other than the Registrant ☒

Check the appropriate box:

- ☐ Preliminary Proxy Statement
☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
☐ Definitive Proxy Statement
☐ Definitive Additional Materials
☒ Soliciting Material Under Rule 14a-12

VIVUS, Inc.

(Name of Registrant as Specified In Its Charter)

**First Manhattan Co.
First Health, L.P.
First Health Limited
First Health Associates, L.P.
First BioMed Management Associates, LLC
First BioMed, L.P.
First BioMed Portfolio, L.P.
Sarissa Capital Management LP
Sarissa Capital Offshore Master Fund LP
Sarissa Capital Domestic Fund LP
Michael James Astrue
Rolf Bass
Jon C. Biro
Samuel F. Colin
Alexander J. Denner
Johannes J.P. Kastelein
Melvin L. Keating
David York Norton
Herman Rosenman**

(Name of Person(s) Filing Consent Statement, if other than the Registrant)

Payment of Filing Fee (check the appropriate box):

- ☒ No fee required.
☐ Fee computed on table below per Exchange Act Rule 14a-6(i)(4) and 0-11.
1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

On May 23, 2013, First Manhattan Co. and its affiliates (collectively, "First Manhattan") issued a press release announcing that they have increased their slate of director nominees for election to the board of VIVUS, Inc. ("Vivus") at Vivus's 2013 annual meeting of stockholders (the "Annual Meeting") to nine, to include Alexander J. Denner, Ph.D., and First Manhattan's two previously announced alternate director nominees, Dr. Rolf Bass and Melvin Keating. A copy of the press release is attached as Exhibit 1.

Also on May 23, 2013, First Manhattan posted additional references to www.ourmaterials.com/VVUS/. Copies of the references are attached as Exhibit 2.

Updated information regarding the Participants in a solicitation of proxies of the stockholders of Vivus in connection with the Annual Meeting is filed herewith as Exhibit 3.

FIRST MANHATTAN ADDS ALEX DENNER TO VIVUS BOARD SLATE

Denner's Sarissa Capital Management Owns 2 Million Vivus Shares

First Manhattan Slate Expanded to Nine Director Nominees

New York – May 23, 2013 – First Manhattan Co. (“FMC”), an owner-managed and operated investment advisory firm and the beneficial holder of approximately 9.9 percent of the outstanding shares of VIVUS, Inc. (“Vivus”) (NASDAQ: VVUS), today announced that in response to Vivus’ recent expansions of the Board it has increased its slate of director nominees to nine, adding Alex Denner, Ph.D., to FMC’s two previously announced additional director nominees, Dr. Rolf Bass and Melvin Keating, for election to the Board at Vivus’ annual meeting of shareholders on July 15, 2013.

Dr. Denner is the Chief Investment Officer and Founding Partner of Sarissa Capital Management LP, a registered investment adviser that focuses on enhancing shareholder value of portfolio companies. Sarissa Capital beneficially owns approximately 2 million shares, or approximately 2 percent of Vivus’ outstanding stock. Dr. Denner has extensive experience as a director of publicly traded healthcare and biotechnology companies. FMC and its director nominees beneficially own a total of approximately 12 million shares, or 11.9 percent of Vivus, in the aggregate. Biographical information on all nine FMC nominees as well as FMC’s press releases and other communications materials are available at www.ourmaterials.com/VVUS.

“Our three additional nominees strengthen an already impressive slate and present a clearly superior alternative to Vivus’ current Board of Directors,” said Sam Colin, M.D., Senior Managing Director at FMC and a Board nominee. “Our nominees have been carefully chosen for their exceptional accomplishments in the key areas required to unlock the substantial value at Vivus. The additions of Dr. Alex Denner, Dr. Rolf Bass, and Mel Keating further strengthen our slate’s deep expertise in corporate operations and strategy and E.U. regulatory affairs. These skill sets complement the strong U.S. commercialization and regulatory expertise of the FMC slate.

“In contrast to the current Vivus Board, our nominees offer total independence from management. Our nominees also provide alignment of Board and shareholder interests, and a realistic plan for value creation.”

New Nominees’ Key Attributes, Experience and Skills and the Benefit to the Vivus Board of Directors

Alexander J. Denner, PhD.: Dr. Denner has extensive experience overseeing the operations and research and development of biopharmaceutical companies and evaluating corporate

governance matters. He also has extensive experience as an investor, particularly with respect to healthcare companies, and possesses broad life sciences industry knowledge.

Rolf Bass, M.D.: Dr. Bass is an E.U. regulatory expert, with a thorough understanding of the regulatory process and evolving evaluation standards through serving in the highest levels of the EMA, CHMP, and the German BfArM.

Mel Keating: Mr. Keating has extensive public and private company experience in healthcare and non-healthcare companies as a senior executive and director. He brings especially strong expertise executing significant operational turnarounds. As a director, he has served as Board Chairman and on the Capital, Strategic and Audit Committees, and he has led successful efforts to streamline corporate operations, implement growth agendas and execute transactions that have resulted in marked increases in shareholder value.

Full biographies of Messrs. Denner, Keating and Dr. Bass follow. Biographical information on all nine FMC nominees as well as FMC's press releases and other communications materials are available at www.ourmaterials.com/VVUS.

Alexander J. Denner, Ph.D. founded Sarissa Capital Management LP, a registered investment advisor, in 2012. Sarissa Capital focuses on enhancing shareholder value of portfolio companies. From 2006 to November 2011, Dr. Denner served as a Senior Managing Director of Icahn Capital, an entity through which Carl C. Icahn conducts his investment activities. Prior to that, he served as a portfolio manager at Viking Global Investors, a private investment fund, and Morgan Stanley Investment Management, a global asset management firm.

Dr. Denner is a director of Biogen Idec and Enzon Pharmaceuticals. During the past five years, Dr. Denner has served as a director of the following publicly-traded companies: Amylin Pharmaceuticals, ImClone Systems (where he was Chairman of Executive Committee), and Adventrx Pharmaceuticals.

Dr. Denner received his S.B. degree from the Massachusetts Institute of Technology and his M.S., M.Phil. and Ph.D. degrees from Yale University.

Dr. Rolf Bass most notably served in the distinguished role of Head of Human Medicines Evaluation Unit at the EMA in London from 1995 to 2000. There he oversaw medicines for human use for marketing authorization and pharmacovigilance, including pre-approval aspects (scientific advice, regulatory affairs, CPMP Secretariat, European Commission and ICH liaison), post-marketing issues (pharmacovigilance, variations and extensions, and renewals), and supported designated Central and Eastern European Countries Drug Regulatory Authorities in the accession of their countries to the European Union. In 2000, he was appointed member to the CPMP (now CHMP), and set up the new Department for European and International Business of the Federal Institute for Drugs and Medical Devices (BfArM). Dr. Bass started his regulatory career at the German Health Authority (BGA) and became Chairman of CPMP's

Safety Working Party in 1984 where he created the tripartite ICH guideline on Testing for Reproductive Toxicity. In 2007 he held the “Annual Award Lecture” at the Annual Meeting of the European Teratology Society (ETS) and was awarded with the “Walter-Cyran Medaille” of the German Society for Drug Regulatory Affairs (DRGA). Most recently, Dr. Bass was appointed Visiting Professor for Pharmaceutical Medicine at the University of Basel, Switzerland in 2007. Dr. Bass holds a medical degree from Free University of Berlin.

Mel Keating most recently served as President and Chief Executive Officer of Alliance Semiconductor Corp. from 2005 to 2008. During that time, he transformed it from a distressed company with a market capitalization of \$80 million to one that generated over \$250 million of distributable cash and a 2.5x increase in the company’s stock price. Prior to his role at Alliance Semiconductor, Mr. Keating served as Executive Vice President and Chief Financial Officer and Treasurer of Quovadx Inc. (Nasdaq: QVDX), a healthcare IT company, from 2004 to 2005, and as a strategy consultant at Warburg Pincus Equity Partners from 1997 to 2004. He currently serves a Director of API Technologies Corp (Nasdaq: ATNY), Red Lion Hotels Corp (NYSE: RLH), Crown Crafts, Inc. (Nasdaq: CRWS), BluePhoenix Solutions Ltd (Nasdaq: BPHX), and Marlborough Software Development Corp. He previously served on the boards of White Electronic Designs and Integral Systems, where he led strategic reviews of the businesses that resulted in sales of each of the companies at approximately 2x the stock price when he joined the boards. He also was previously a director of Aspect Medical Systems. Mr. Keating received both an M.B.A. in Finance and MS in Accounting from the University of Pennsylvania’s Wharton school of business, and B.A. in Art History from Rutgers University.

About First Manhattan Co.

First Manhattan Co. (“FMC”) was founded in 1964 and remains an owner-operated investment advisory firm. FMC is registered with the U.S. Securities and Exchange Commission as an investment adviser and as a broker-dealer, and is a member of the Financial Industry Regulatory Authority (FINRA).

FMC provides professional investment management services primarily to high net worth individuals as well as to partnerships, trusts, retirement accounts, pension plans and institutional clients. The firm currently manages in excess of \$14 billion.

Additional Information and Where to Find It

FIRST MANHATTAN CO., FIRST HEALTH, L.P., FIRST HEALTH LIMITED, FIRST HEALTH ASSOCIATES, L.P., FIRST BIOMED MANAGEMENT ASSOCIATES, LLC, FIRST BIOMED, L.P. AND FIRST BIOMED PORTFOLIO, L.P. (COLLECTIVELY, “FIRST MANHATTAN”) INTEND TO FILE WITH THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) A DEFINITIVE PROXY STATEMENT AND ACCOMPANYING PROXY CARD TO BE USED TO SOLICIT PROXIES FROM THE STOCKHOLDERS OF VIVUS, INC. (THE “COMPANY”) IN CONNECTION WITH THE

COMPANY'S 2013 ANNUAL MEETING OF STOCKHOLDERS. ALL STOCKHOLDERS OF THE COMPANY ARE ADVISED TO READ THE DEFINITIVE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO THE SOLICITATION OF PROXIES BY FIRST MANHATTAN, SARISSA CAPITAL MANAGEMENT LP, SARISSA CAPITAL OFFSHORE MASTER FUND LP, SARISSA CAPITAL DOMESTIC FUND LP, MICHAEL JAMES ASTRUE, ROLF BASS, JON C. BIRO, SAMUEL F. COLIN, ALEXANDER J. DENNER, JOHANNES J.P. KASTELEIN, MELVIN L. KEATING, DAVID YORK NORTON AND HERMAN ROSENMAN (COLLECTIVELY, THE "PARTICIPANTS") FROM THE STOCKHOLDERS OF THE COMPANY, WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION, INCLUDING ADDITIONAL INFORMATION RELATED TO THE PARTICIPANTS. WHEN COMPLETED, THE DEFINITIVE PROXY STATEMENT AND FORM OF PROXY WILL BE FURNISHED TO SOME OR ALL OF THE STOCKHOLDERS OF THE COMPANY AND WILL, ALONG WITH OTHER RELEVANT DOCUMENTS, BE AVAILABLE AT NO CHARGE ON THE SEC'S WEB SITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov). IN ADDITION, COPIES OF THE DEFINITIVE PROXY STATEMENT AND ACCOMPANYING PROXY CARD (WHEN AVAILABLE) MAY BE OBTAINED WITHOUT CHARGE UPON REQUEST BY CONTACTING MACKENZIE PARTNERS, INC. AT (800) 322-2885 (TOLL-FREE) OR (212) 929-5500 (COLLECT).

INFORMATION ABOUT THE PARTICIPANTS AND A DESCRIPTION OF THEIR DIRECT OR INDIRECT INTERESTS BY SECURITY HOLDINGS WILL BE CONTAINED IN EXHIBIT 2 TO THE SCHEDULE 14A TO BE FILED BY FIRST MANHATTAN WITH THE SEC ON MAY 23, 2013. THIS DOCUMENT CAN BE OBTAINED FREE OF CHARGE FROM THE SOURCES INDICATED ABOVE.

Contacts:

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Vivus – Why Change Is Needed Now

First Manhattan Co.

- First Manhattan Co. - Nominee Bios - May 22nd, 2013 [PDF]
- First Manhattan Co. - Press Release - May 22nd, 2013 [PDF]

FIRST MANHATTAN CO., FIRST HEALTH, L.P., FIRST HEALTH LIMITED, FIRST HEALTH ASSOCIATES, L.P., FIRST BIOMED MANAGEMENT ASSOCIATES, LLC, FIRST BIOMED, L.P. AND FIRST BIOMED PORTFOLIO, L.P. (COLLECTIVELY, “**FIRST MANHATTAN**”) INTEND TO FILE WITH THE SECURITIES AND EXCHANGE COMMISSION (THE “**SEC**”) A DEFINITIVE PROXY STATEMENT AND ACCOMPANYING PROXY CARD TO BE USED TO SOLICIT PROXIES FROM THE STOCKHOLDERS OF VIVUS, INC. (THE “**COMPANY**”) IN CONNECTION WITH THE COMPANY'S 2013 ANNUAL MEETING OF STOCKHOLDERS. ALL STOCKHOLDERS OF THE COMPANY ARE ADVISED TO READ THE DEFINITIVE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO THE SOLICITATION OF PROXIES BY FIRST MANHATTAN, SARISSA CAPITAL MANAGEMENT LP, SARISSA CAPITAL OFFSHORE MASTER FUND LP, SARISSA CAPITAL DOMESTIC FUND LP, MICHAEL JAMES ASTRUE, ROLF BASS, JON C. BIRO, SAMUEL F. COLIN, ALEXANDER J. DENNER, JOHANNES J.P. KASTELEIN, MELVIN L. KEATING, DAVID YORK NORTON AND HERMAN ROSENMAN (COLLECTIVELY, THE “**PARTICIPANTS**”) FROM THE STOCKHOLDERS OF THE COMPANY, WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION, INCLUDING ADDITIONAL INFORMATION RELATED TO THE PARTICIPANTS. WHEN COMPLETED, THE DEFINITIVE PROXY STATEMENT AND FORM OF PROXY WILL BE FURNISHED TO SOME OR ALL OF THE STOCKHOLDERS OF THE COMPANY AND WILL, ALONG WITH OTHER RELEVANT DOCUMENTS, BE AVAILABLE AT NO CHARGE ON THE SEC'S WEB SITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov). IN ADDITION, FIRST MANHATTAN WILL PROVIDE COPIES OF THE DEFINITIVE PROXY STATEMENT AND ACCOMPANYING PROXY CARD (WHEN AVAILABLE) WITHOUT CHARGE UPON REQUEST.

PARTICIPANTS

First Manhattan Co., together with the entities and individuals below (collectively, the "Participants"), are anticipated to be, or may be deemed to be, participants in a solicitation of proxies from the stockholders of the Issuer in connection with the 2013 annual meeting of stockholders (the "Proxy Solicitation").

The Participants include (i) First Manhattan Co. ("FMC"); (ii) First Health, L.P. ("FH LP"); (iii) First Health Limited ("FH Limited"); (iv) First Health Associates, L.P. ("FHA"); (v) First BioMed Management Associates, LLC ("FBMA"); (vi) First BioMed, L.P. ("First BioMed"); (vii) First BioMed Portfolio, L.P. ("BioMed Portfolio" and together with FMC, FH LP, FH Limited, FHA, FBMA and First BioMed, "First Manhattan"); (viii) Sarissa Capital Management LP ("Sarissa Management"); (ix) Sarissa Capital Offshore Master Fund LP ("Sarissa Offshore"); (x) Sarissa Capital Domestic Fund LP ("Sarissa Domestic" and, together with Sarissa Offshore, the "Denner Funds"); and (xi) each of the following individuals whom First Manhattan proposes to nominate as a director pursuant to the Proxy Solicitation: Michael James Astrue, Rolf Bass, Jon C. Biro, Samuel F. Colin, Alexander J. Denner, Johannes J.P. Kastelein, Melvin L. Keating, David York Norton and Herman Rosenman (collectively, the "Nominees").

FMC is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940, and its principal business is investment management. FBMA is registered as an investment advisor under the Investment Advisers Act of 1940, and its principal business is investment management. The principal business of Sarissa Management is investment management. The principal business of each of FH LP, FH Limited, FHA, First BioMed, First BioMed Portfolio and the Denner Funds is to invest in securities. Mr. Astrue retired from the federal government in February 2013 after completing his six-year term as Commissioner of Social Security, and has not yet undertaken a principal business. The principal business of Dr. Bass is serving as a Visiting Professor for Pharmaceutical Medicine at the University of Basel, Switzerland, where he is in charge of the development of postgraduate master curricula for Regulatory Affairs within Pharmaceutical Medicine. The principal business of Mr. Biro is to serve as Executive Vice President and Chief Financial Officer of Consolidated Graphics, Inc., a public company in the general commercial printing industry. The principal business of Dr. Colin is to serve as a Partner and Senior Managing Director at FMC, which provides investment management services to individuals,

partnerships, trusts, retirement accounts and institutional clients. The principal business of Dr. Denner is to serve as Chief Investment Officer of Sarissa Capital Management LP, a hedge fund firm. The principal business of Dr. Kastelein is to serve as a Professor of Medicine at the Department of Vascular Medicine at the Academic Medical Center of the University of Amsterdam, where he holds the Strategic Chair of Genetics of Cardiovascular Disease. The principal business of Mr. Keating is serving a private consultant, providing investment advice and other services to private equity firms. The principal business of Mr. Norton since his retirement in September 2011 has been to serve as an advisor or director, as applicable, of several private and public companies, including Savient Pharmaceuticals Inc., the American Foundation for Suicide Prevention and Tapestry Networks. The principal business of Mr. Rosenman following his retirement in October 2012 has been to serve on the board of directors of BioFire Diagnostics, Inc., a private company.

The principal business address of First Manhattan and Dr. Colin is 399 Park Avenue, New York, New York 10022. The principal business address of Mr. Astrue is 47 Benton Road, Belmont, MA 02478. The principal business address of Dr. Bass is Boelckestrasse 80, 12101 Berlin, Germany. The principal business address of Mr. Biro is 5858 Westheimer, Suite 200, Houston, TX 77057. The principal business address of Sarissa Management, Sarissa Domestic and Dr. Denner is 660 Steamboat Road, 3rd Floor, Greenwich, CT 06830. The principal business address of Sarissa Offshore is c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands. The principal business address of Dr. Kastelein is AMC, University of Amsterdam, Meibergdreef 15, 1105 AZ Amsterdam. The principal business address of Mr. Keating is 18 Driftwood Dr., Livingston, NJ 07039. The principal business address of Mr. Norton is 8 Greenholm Street, Apt. C, Princeton, NJ 08540. The principal business address of Mr. Rosenman is 8420 Santaluz Village Green E. #100, San Diego, CA 92127.

As of the close of business on May 22, 2013, the Participants may be deemed to beneficially own, in the aggregate, 12,006,203 shares of common stock, par value \$0.001 per share (the "Common Stock"), constituting approximately 11.9% of the Issuer's outstanding voting shares. Of the 12,006,203 shares of Common Stock owned in the aggregate by the Participants, such shares of Common Stock may be deemed to be beneficially owned (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934 (the "Exchange Act")) as follows: (a) 9,989,604 shares of Common Stock may be deemed to be beneficially owned by FMC of which 3,578,675 may be deemed to be beneficially owned by virtue of its role as investment advisor to FH LP, FH Limited and FHA, and of which 3,704,129 shares may be deemed to be beneficially owned by virtue of its role as investment advisor to certain investment advisory accounts (the "Investment Accounts"), its discretionary authority over certain discretionary brokerage accounts (the "Brokerage Accounts"), and its relationship with certain partners and employees of FMC who hold and manage certain accounts, including the 500,000 shares held in Dr. Colin's personal account and the 42,000 shares 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"); (b) 2,706,800 shares of Common Stock may be deemed to be beneficially owned by FBMA, by virtue of its role as investment advisor to First BioMed and BioMed Portfolio; (c) 5,000 shares of Common Stock may be deemed to be beneficially owned by Mr. Rosenman in his Individual Retirement Account; (d) 2,000 shares of Common Stock may be deemed to be beneficially owned by Mr. Biro; (e) 1,500 shares of Common Stock may be deemed to be beneficially owned by Mr. Norton; (f) 900 shares of Common Stock may be deemed to be beneficially owned by Mr. Keating; (g) 100 shares of Common Stock may be deemed to be beneficially owned by Dr. Bass; and (h) an aggregate of 2,007,099 shares of Common Stock may be deemed to be beneficially owned by Dr. Denner by virtue of his being a principal of Sarissa Management, the investment advisor to Sarissa Offshore, which directly holds 1,024,623 shares of Common Stock, and Sarissa Domestic, which directly holds 982,476 shares of Common Stock. An aggregate of 1,000 shares of Common Stock beneficially owned by FH LP are owned by FH LP in record name.

By virtue of his status as a managing member of the sole general partner of FMC, Dr. Colin may be deemed to beneficially own 9,239,509 shares of Common Stock beneficially owned by FMC, which shares include (x) 3,578,675 shares of Common Stock that FMC beneficially owns by virtue of its role as investment advisor to FH LP, FH Limited and FHA; (y) 2,954,034 shares of Common Stock held by the Investment Accounts and certain Brokerage Accounts and Employee Accounts over which Dr. Colin has discretionary voting power; and (z)

2,706,800 shares of Common Stock that FMC beneficially owns by virtue of its role as investment advisor to First BioMed and BioMed Portfolio. Dr. Colin hereby expressly disclaims beneficial ownership of such 9,239,509 shares of Common Stock, other than the 500,000 shares held in Dr. Colin's personal account and the 42,000 shares held by trusts established for the benefit of Dr. Colin's family members. As of such date, no Nominee other than Dr. Colin, Mr. Rosenman, Mr. Biro, Dr. Denner, Mr. Norton, Mr. Keating and Dr. Bass beneficially owns any shares of Common Stock.

First Manhattan, Dr. Colin, Mr. Rosenman, Mr. Biro, Mr. Norton, Mr. Keating, Dr. Bass, Dr. Denner, Sarissa Management and the Denner Funds may be deemed to have formed a "group," within the meaning of Section 13(d)(3) of the Exchange Act. Collectively, the group (and each member thereof) may be deemed to have beneficial ownership of a combined 12,006,203 shares of Common Stock, constituting approximately 11.9% of the Issuer's outstanding shares of Common Stock. First Manhattan disclaims beneficial ownership of any shares of Common Stock beneficially owned by Dr. Denner and the Denner Funds or beneficially owned by any Nominee (other than with respect to Dr. Colin). Dr. Denner and the Denner Funds each disclaim beneficial ownership of any shares of Common Stock beneficially owned by First Manhattan and any Nominee (other than Dr. Denner). Each Nominee (other than Dr. Denner and Dr. Colin) disclaims beneficial ownership of any shares of Common Stock beneficially owned by any Participant other than such Nominee.

The percentages contained herein are based upon 100,665,029 shares of Common Stock outstanding as of April 23, 2013, as reported in the Issuer's Quarterly Report on Form 10-Q filed with the SEC on May 8, 2013.

In addition to the above, employees of the Participants may assist in the solicitation of proxies and will receive no additional consideration therefor and any persons nominated by the Participants for director of the Issuer pursuant to the Participants' proxy solicitation will, when identified, constitute additional participants in the solicitation.