

FORM 5

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

☐ Form 3 Holdings Reported.

☐ Form 4 Transactions Reported.

ANNUAL STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

OMB Number: 3235-0362
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1. Name and Address of Reporting Person* <u>DIETRICH JOHN W</u> (Last) (First) (Middle) (Street) (City) (State) (Zip)	2. Issuer Name and Ticker or Trading Symbol <u>VIVUS INC [VVUS]</u>	5. Relationship of Reporting Person(s) to Issuer (Check all applicable) Director 10% Owner X Officer (give title below) Other (specify below) <u>Vice President, R & D</u>
	3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year) <u>12/31/2003</u>	
	4. If Amendment, Date of Original Filed (Month/Day/Year)	6. Individual or Joint/Group Filing (Check Applicable Line) X Form filed by One Reporting Person Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned									
1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at end of Issuer's Fiscal Year (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
				Amount	(A) or (D)	Price			
Common Stock	10/31/2003		J	2,287	A	\$3.1705	12,616	D	

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)														
1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
					(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Incentive Stock Option (right to buy)	\$4	01/20/2003		A	18,441		(2)	01/20/2013	Common Stock	18,441	(1)	18,441	D	
Incentive Stock Option (right to buy)	\$4						(2)	10/02/2010	Common Stock	25,000		25,000	D	
Incentive Stock Option (right to buy)	\$8.08						(2)	01/21/2012	Common Stock	22,114		22,114	D	
Non-Qualified Stock Option (right to buy)	\$4						(2)	10/02/2010	Common Stock	75,000		75,000	D	
Non-Qualified Stock Option (right to buy)	\$4						(2)	01/20/2013	Common Stock	7,809		7,809	D	
Non-Qualified Stock Option (right to buy)	\$8.08						(2)	01/21/2012	Common Stock	4,136		4,136	D	

Explanation of Responses:
1. There is no purchase price necessary. This is an option grant.
2. There is no exercisable date. This is an option grant.

By: /s/ Linda Derboghosian
For: John Dietrich

02/13/2004

** Signature of Reporting Person Date

****** Intentional misstatements or omissions of facts constitute Federal Criminal Violations See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB Number.