

SCHEDULE 14A
Proxy 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 Proxy 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 July 15, 2013, First Manhattan Co. and its affiliates (“First Manhattan”) issued by press release a statement in response to the adjournment by VIVUS, Inc. (“Vivus”) of its 2013 annual meeting of stockholders (the “Annual Meeting”). In its statement, First Manhattan expressed its belief that the decision to adjourn the Annual Meeting is a delaying tactic by the current board of directors of Vivus (the “Board”) aimed to preserve the Board’s entrenched position and disenfranchise Vivus stockholders. In addition, First Manhattan, in response to accusations by Vivus that First Manhattan has violated federal securities laws, asserted that it is aware of its disclosure obligations under federal securities laws and has filed all materials required to be filed with the U.S. Securities and Exchange Commission. A copy of the press release containing the statement is filed herewith as Exhibit 1.

Also on July 15, 2013, First Manhattan issued a second statement by press release expressing First Manhattan’s objection to Vivus’ adjournment of the Annual Meeting and stating that such adjournment is an attack on Vivus stockholders’ right to vote at the Annual Meeting. The statement also expressed First Manhattan’s belief that Vivus’ stated reasons for adjourning the Annual Meeting are a pretext and that Vivus lacked the authority to adjourn the Annual Meeting without a stockholder vote approving such adjournment. A copy of the press release containing the statement is filed herewith as Exhibit 2.

Also on July 15, 2013, First Manhattan posted additional references to www.ourmaterials.com/VVUS/. Copies of the additional references are filed herewith as Exhibit 3.

EXHIBIT 1

FIRST MANHATTAN CALLS ADJOURNMENT OF ANNUAL MEETING BY THE VIVUS BOARD A DESPERATE ACT TO DISENFRANCHISE SHAREHOLDERS

NEW YORK, July 15, 2013 – First Manhattan Co. (“FMC”), an owner-managed and operated investment advisory firm and the owner of approximately 9.9 percent of the outstanding shares of VIVUS, Inc. (“Vivus”) (NASDAQ: VVUS), today issued the following statement in response to Vivus’ adjourning their Annual Meeting of Stockholders:

“We are profoundly disappointed by this delaying tactic by the entrenched board. Vivus’ stated reason to adjourn the vote is just a pretense to buy time in an attempt to improperly influence the election, in our view. We believe this attack on the rights of Vivus shareholders is a desperate action by desperate people.

“FMC is acutely aware of its disclosure obligations and strongly disagrees with Vivus’ recent comments. Nothing that is required to be filed with the U.S. Securities and Exchange Commission has not already been filed. Unlike Vivus’ sitting board and its CEO, all of FMC’s filed materials have been clear on how Egan Jones and ISS have recognized the need for change at Vivus. Egan Jones recommends that Vivus shareholders vote for all nine of FMC’s nominees on the white proxy card and ISS recommends a vote for three of FMC’s nominees on the white proxy card. ISS recommends that shareholders do not vote on Vivus’ gold proxy card.

“Over the past several days and as late as yesterday evening, we have been negotiating with Vivus in good faith to achieve a settlement that would be beneficial to all shareholders. Instead of continuing these negotiations, Vivus’ board and CEO have resorted to tactics that we believe are simply aimed at preserving their entrenched position.

“Since the beginning of the proxy contest we have been telling fellow shareholders of our belief that the sitting board has exercised poor judgment and has put their interests ahead of those of the shareholders. Now, the Vivus board has acted with a strong-armed tactic that proves our case and reinforces our call for a much needed overhaul. Disenfranchising shareholders approximately twelve hours before a critical vote on the future of their company is inexcusable because it violates the very concept of a shareholder democracy.

“FMC will examine and consider all options to protect the rights of Vivus’ shareholders, including legal action.

“It is time to let Vivus’ shareholders voice their opinions and determine the future of their company. We encourage Vivus’ shareholders to vote their shares on the WHITE proxy card. If shareholders have already voted Vivus’ gold proxy card, they can still vote the WHITE card. Every vote counts and every shareholder’s vote is important no matter how many shares they own. Even if shareholders do not vote for all of our nominees, they should vote our WHITE proxy. Telephone, internet and ProxyEdge voting may not be available to all shareholders. Please call MacKenzie Partners at the number below for assistance.”

You can find additional details regarding our nominees’ strategic plan for value creation at <http://www.ourmaterials.com/VVUS/>. However, the execution of any strategic plan, including the hiring of any management personnel, will be subject to the fiduciary duties of the directors, if elected.

If you have any questions, require assistance with voting your WHITE proxy card, or need additional copies of the proxy materials, please contact our proxy solicitor, MacKenzie Partners, Inc. at (212) 929-5500 or Toll-Free (800) 322-2885.

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”) FILED WITH THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) ON JUNE 3, 2013, 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 BECAUSE THEY CONTAIN IMPORTANT INFORMATION, INCLUDING ADDITIONAL INFORMATION ABOUT THE PARTICIPANTS AND A DESCRIPTION OF THEIR DIRECT OR INDIRECT INTERESTS BY SECURITY HOLDINGS. THE DEFINITIVE PROXY STATEMENT AND FORM OF PROXY HAVE BEEN FURNISHED TO SOME OR ALL OF THE STOCKHOLDERS OF THE COMPANY AND ARE, ALONG WITH OTHER RELEVANT DOCUMENTS, 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 MAY BE OBTAINED WITHOUT CHARGE UPON REQUEST BY CONTACTING MACKENZIE PARTNERS, INC. AT (800) 322-2885 (TOLL-FREE) OR (212) 929-5500 (COLLECT).

Contacts

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Mike Pascale, 212-371-5999, mmp@abmac.com
or
Mackenzie Partners
Larry Denny, 212-929-5239
Charlie Koons, 212-929-5708

EXHIBIT 2

FIRST MANHATTAN OBJECTS TO ADJOURNMENT OF VIVUS ANNUAL MEETING

Calls Actions By The Board Outrageous Attack On Stockholders' Rights

NEW YORK, July 15, 2013 – First Manhattan Co. (“FMC”), an owner-managed and operated investment advisory firm and the owner of approximately 9.9 percent of the outstanding shares of VIVUS, Inc. (“Vivus”) (NASDAQ: VVUS), today issued the following statement in response to Vivus adjourning their Annual Meeting of Stockholders:

“First Manhattan vigorously objects to the actions taken by the Vivus Board to adjourn the annual meeting today without allowing stockholders the right to vote for the annual election of directors. We believe the adjournment is an outrageous attack on Vivus stockholders’ right to vote and be heard on the important issues facing the company.

“First Manhattan believes Vivus’ stated reasons for adjourning the meeting are a pretext, lacking substance and a desperate act to delay an important vote on the future of the company. In addition, we believe that the Vivus Board lacked authority to adjourn the annual meeting without a stockholder vote to do so. We voted our shares against adjournment and reserve our right to challenge the adjournment and take any other action to protect the stockholders’ right to be heard without delay.

“We believe Vivus stockholders are fully informed about the issues in this proxy contest and should be allowed to vote today on the future of their investments. Vivus’ sitting Board has wasted enough time and stockholder money in a blatant attempt to further entrench themselves.

“We encourage Vivus’ stockholders to vote their shares on the WHITE proxy card. If stockholders have already voted Vivus’ gold proxy card, they can still vote the WHITE card. Every vote counts and every stockholder’s vote is important no matter how many shares they own. Even if stockholders do not vote for all of our nominees, they should vote our WHITE proxy. Telephone, internet and ProxyEdge voting may not be available to all stockholders. Please call MacKenzie Partners at the number below for assistance.”

You can find additional details regarding our nominees’ strategic plan for value creation at <http://www.ourmaterials.com/VVUS/>. However, the execution of any strategic plan, including the hiring of any management personnel, will be subject to the fiduciary duties of the directors, if elected.

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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.

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Vivus - Why Change Is Needed Now

First Manhattan Co.

Press releases and other documents

- [First Manhattan Objects to Adjournment of Vivus Annual Meeting - July 15th, 2013 \[PDF \]](#)
 - [First Manhattan Co. calls Adjournment of Annual Meeting by the VIVUS Board a Desperate Act to Disenfranchise Shareholders - July 15th, 2013 \[PDF \]](#)
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