

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

---

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)  
**October 11, 2018**

---

**VIVUS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**001-33389**  
(Commission File Number)

**94-3136179**  
(IRS Employer  
Identification No.)

**900 E. HAMILTON AVENUE, SUITE 550  
CAMPBELL, CA 95008**  
(Address of principal executive offices, including zip code)

**(650) 934-5200**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

---

---

---

**Item 1.01. Entry into a Material Definitive Agreement.**

On October 11, 2018, VIVUS, Inc., a Delaware corporation (the “Company”), and U.S. Bank National Association, as trustee (the “Trustee”) and as collateral agent (the “Collateral Agent”), entered into a first supplemental indenture (the “First Supplemental Indenture”) to that certain indenture (the “Indenture”) dated June 8, 2018 by and among the Company, the Trustee and the Collateral Agent pursuant to which the Company issued \$110.0 million aggregate principal amount of senior secured notes due 2024 (the “Secured Notes”).

The First Supplemental Indenture amended the Indenture to provide, among other things, additional capacity for the Company to repurchase up to \$20.0 million aggregate principal amount of its outstanding 4.50% senior convertible notes due 2020 (the “Convertible Notes”) from time to time prior to May 31, 2019. Holders of greater than a majority of the outstanding Secured Notes consented to the amendments contained in the First Supplemental Indenture.

The foregoing description of the Indenture, the Senior Notes and the First Supplemental Indenture do not purport to be complete and are qualified in their entirety by reference to Exhibits 4.1, 4.2 and 4.3 and are incorporated herein by reference.

**Item 8.01 Other Events.**

On October 17, 2018, the Company settled a purchase of approximately \$8.6 million outstanding principal amount of its Convertible Notes from a holder in a private transaction at a purchase price discounted to par.

**Item 9.01. Financial Statements and Exhibits.****(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
4.1	<a href="#"><u>Indenture, dated as of June 8, 2018, among VIVUS, Inc., as issuer, the other guarantors from time to time and U.S. Bank National Association, as trustee and collateral agent (incorporated by reference to Exhibit 4.1 to the Company’s Current Report on Form 8-K (File No. 001-33389) filed June 11, 2018).</u></a>
4.2	<a href="#"><u>Form of Secured Note (incorporated by reference to Exhibit 4.2 to the Company’s Current Report on Form 8-K (File No. 001-33389) filed June 11, 2018).</u></a>
4.3	<a href="#"><u>First Supplemental Indenture, dated as of October 11, 2018, among VIVUS, Inc., as issuer and U.S. Bank National Association, as trustee and collateral agent.</u></a>

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**VIVUS, INC.**

/s/ John L. Slebir

John L. Slebir

Senior Vice President, Business Development, General Counsel and Secretary

Date: October 17, 2018

## FIRST SUPPLEMENTAL INDENTURE

This FIRST SUPPLEMENTAL INDENTURE (this “First Supplemental Indenture”) dated as of October 11, 2018 is among VIVUS, Inc. (the “Issuer”) and U.S. Bank National Association, as trustee (the “Trustee”) and as collateral agent (the “Collateral Agent”) under the Indenture referred to below.

## WITNESSETH:

**WHEREAS**, the Issuer has heretofore executed and delivered to the Trustee and the Collateral Agent an indenture (as amended, supplemented or otherwise modified, the “Indenture”) dated as of June 8, 2018, providing for the issuance of the Issuer’s 10.375% Senior Secured Notes due 2024 (the “Securities”);

**WHEREAS**, \$110,000,000 in aggregate principal amount of the Securities is currently outstanding;

**WHEREAS**, pursuant to Section 9.02(a) of the Indenture the Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement the Indenture, the Securities and the Security Documents, and may waive any provision thereof with the written consent of Holders of a majority in principal amount of the Securities then outstanding voting as a single class (including consents obtained in connection with a tender offer or exchange offer for the Securities);

**WHEREAS**, the Issuer has received, and has delivered to the Trustee evidence of, written consent of the Holders of a majority in principal amount of the Securities to certain amendments to the Indenture set forth herein; and

**WHEREAS**, in accordance with Section 9.05 of the Indenture, the Issuer has delivered to the Trustee simultaneously with the execution and delivery of this First Supplemental Indenture, an Officers’ Certificate and an Opinion of Counsel relating to this First Supplemental Indenture.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuer and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

## ARTICLE I

## AMENDMENTS TO INDENTURE AND NOTES

Section 1.1      Amendment to Article Four of the Indenture. Section 4.04(b) of the Indenture shall be amended to include the following clause (xvi):

“(xvi) the repurchase, redemption or other acquisition or retirement for value of up to \$20.0 million aggregate principal amount of the Convertible Notes at any time and from time to time on or prior to May 31, 2019 and any fees, expenses and defeasance costs in connection therewith.”

Section 1.2      Amendments to Notes. The Notes are hereby amended to delete any and all provisions inconsistent with the amendments to the Indenture effected by this First Supplemental Indenture.

## ARTICLE II

### MISCELLANEOUS PROVISIONS

Section 2.1      Defined Terms. As used in this First Supplemental Indenture, terms defined in the Indenture or in the preamble or recitals hereto are used herein as therein defined, except that the term “Holders” in this Supplemental Indenture shall refer to the term “Holders” as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such Holders. The words “herein”, “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

Section 2.2      Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended and supplemented hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This First Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder heretofore and hereafter existing shall be bound hereby.

Section 2.3      Governing Law. THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND ANY SUCCESSOR TO SUCH STATUTE), WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

Section 2.4      Waiver of Jury Trial. EACH OF THE ISSUER, THE GUARANTORS FROM TIME TO TIME PARTY HERETO, THE TRUSTEE AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FIRST SUPPLEMENTAL INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 2.5      No Recourse Against Others. No past, present or future director, officer, employee, manager, incorporator, agent or holder of any Equity Interests in the Issuer or of any Guarantors or any direct or indirect parent corporation, as such, shall have any liability for any obligations of the Issuer and such Guarantors (if any) under the Securities, any Guarantees, the Indenture or this First Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation.

Section 2.6      Successors. All agreements of the Issuer in this First Supplemental Indenture shall bind its successors. All agreements of the Trustee and Collateral Agent in this First Supplemental Indenture shall bind its successors.

Section 2.7      The Trustee. The Trustee accepts the amendments of the Indenture effected by this First Supplemental Indenture and agrees to perform its duties under the Indenture as hereby amended, but on the terms and conditions set forth in the Indenture, including the terms and provisions defining the rights and limiting the liabilities and responsibilities of the Trustee, which terms and provisions shall in like manner define its rights and limit its liabilities and responsibilities in the performance of its duties under the Indenture as hereby amended. All of the provisions contained in the Indenture in respect of the rights, privileges, immunities, powers, and duties of the Trustee shall be applicable in respect of this First Supplemental Indenture as fully and with like force and effect as though fully set forth in full herein. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

Section 2.8      Counterparts. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this First Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this First Supplemental Indenture as to the parties hereto and may be used in lieu of the original First Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 2.9      Severability. In case any provision in this First Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 2.10     Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction thereof.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the date first above written.

VIVUS, Inc.

By: /s/ Mark K. Oki  
Name: Mark K. Oki  
Title: Chief Financial Officer &  
Chief Accounting Officer

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By: /s/ Alison D.B. Nadeau  
Name: Alison D.B. Nadeau  
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION, AS COLLATERAL AGENT

By: /s/ Alison D.B. Nadeau  
Name: Alison D.B. Nadeau  
Title: Vice President

[Signature Page to First Supplemental Indenture]

---