SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934
(Amendment No. 4)*

VIVUS, Inc.
(Name of Issuer)

Common Stock, $0.001 par value
(Title of Class of Securities)

928551100
(CUSIP Number)

Neal K. Stearns, Esq.
First Manhattan Co.
399 Park Avenue
New York, New York 10022
(212) 756-3300

With a copy to:
Marc Weingarten and David Rosewater
Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

April 24, 2013
(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), Rule 13d-1(f) or Rule 13d-1(g), check the following box. [ ]



* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

| | | | |
|---|---|---|---|
| **1** | NAME OF REPORTING PERSON<br>First Manhattan Co. | | |
| **2** | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP | | (a) ☒<br>(b) ☐ |
| **3** | SEC USE ONLY | | |
| **4** | SOURCE OF FUNDS<br>AF | | |
| **5** | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) | | ☐ |
| **6** | CITIZENSHIP OR PLACE OF ORGANIZATION<br>New York | | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH: | **7** | SOLE VOTING POWER<br>5,346,509 shares of Common Stock | |
| | **8** | SHARED VOTING POWER<br>3,857,195 shares of Common Stock | |
| | **9** | SOLE DISPOSITIVE POWER<br>5,346,509 shares of Common Stock | |
| | **10** | SHARED DISPOSITIVE POWER<br>3,857,195 shares of Common Stock | |
| **11** | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON<br>9,203,704 shares of Common Stock | | |
| **12** | CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES | | ☐ |
| **13** | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>9.1% | | |
| **14** | TYPE OF REPORTING PERSON<br>BD; IA; PN | | |

| | | | |
|---|---|---|---|
| **1** | NAME OF REPORTING PERSON<br>First BioMed Management Associates, LLC | | |
| **2** | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP | | (a) ☒<br>(b) ☐ |
| **3** | SEC USE ONLY | | |
| **4** | SOURCE OF FUNDS<br>AF | | |
| **5** | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) | | ☐ |
| **6** | CITIZENSHIP OR PLACE OF ORGANIZATION<br>New York | | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH: | **7** | SOLE VOTING POWER<br>0 | |
| | **8** | SHARED VOTING POWER<br>2,706,800 shares of Common Stock | |
| | **9** | SOLE DISPOSITIVE POWER<br>0 | |
| | **10** | SHARED DISPOSITIVE POWER<br>2,706,800 shares of Common Stock | |
| **11** | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON<br>2,706,800 shares of Common Stock | | |
| **12** | CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES | | ☐ |
| **13** | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>2.7% | | |
| **14** | TYPE OF REPORTING PERSON<br>IA | | |

| | | | |
|---|---|---|---|
| **1** | NAME OF REPORTING PERSON<br>Herman Rosenman | | |
| **2** | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP | | (a) ☒<br>(b) ☐ |
| **3** | SEC USE ONLY | | |
| **4** | SOURCE OF FUNDS<br>PF | | |
| **5** | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) | | ☐ |
| **6** | CITIZENSHIP OR PLACE OF ORGANIZATION<br>United States | | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH: | **7** | SOLE VOTING POWER<br>5,000 shares of Common Stock | |
| | **8** | SHARED VOTING POWER<br>0 | |
| | **9** | SOLE DISPOSITIVE POWER<br>5,000 shares of Common Stock | |
| | **10** | SHARED DISPOSITIVE POWER<br>0 | |
| **11** | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON<br>5,000 shares of Common Stock | | |
| **12** | CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES | | ☐ |
| **13** | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>0.0% | | |
| **14** | TYPE OF REPORTING PERSON<br>IN | | |

| | | | |
|---|---|---|---|
| **1** | NAME OF REPORTING PERSON<br>Jon C. Biro | | |
| **2** | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP | | (a) ☒<br>(b) ☐ |
| **3** | SEC USE ONLY | | |
| **4** | SOURCE OF FUNDS<br>PF | | |
| **5** | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) | | ☐ |
| **6** | CITIZENSHIP OR PLACE OF ORGANIZATION<br>United States | | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH: | **7** | SOLE VOTING POWER<br>2,000 shares of Common Stock | |
| | **8** | SHARED VOTING POWER<br>0 | |
| | **9** | SOLE DISPOSITIVE POWER<br>2,000 shares of Common Stock | |
| | **10** | SHARED DISPOSITIVE POWER<br>0 | |
| **11** | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON<br>2,000 shares of Common Stock | | |
| **12** | CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES | | ☐ |
| **13** | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>0.0% | | |
| **14** | TYPE OF REPORTING PERSON<br>IN | | |

This Amendment No. 4 ("Amendment No. 4") amends and supplements the statement on Schedule 13D filed with the Securities and Exchange Commission (the "SEC") on January 18, 2013 (the "Original Schedule 13D"), Amendment No. 1 to the Original Schedule 13D, filed with the SEC on March 8, 2013 ("Amendment No. 1"), Amendment No. 2 to the Original Schedule 13D, filed with the SEC on April 12, 2013 ("Amendment No. 2") and Amendment No. 3 to the Original Schedule 13D, filed with the SEC on April 17, 2013 ("Amendment No. 3" and together with the Original Schedule 13D, Amendment No. 1, Amendment No. 2 and this Amendment No. 4, the "Schedule 13D") with respect to the shares of common stock, $0.001 par value (the "Common Stock"), of VIVUS, Inc., a Delaware corporation (the "Issuer"). Capitalized terms used herein and not otherwise defined in this Amendment No. 4 have the meanings set forth in the Schedule 13D. This Amendment No. 4 amends Items 2, 3, 4, 5, 6 and 7 as set forth below.

**Item 2. IDENTITY AND BACKGROUND**

Item 2 of the Schedule 13D is hereby amended and restated in its entirety as follows:

This statement is being filed by First Manhattan Co., a New York limited partnership ("FMC"), First BioMed Management Associates, LLC ("FBMA"), a Delaware limited liability company, Herman Rosenman, a United States citizen ("Mr. Rosenman") and Jon C. Biro, a United States citizen ("Mr. Biro" and together with FMC, FBMA and Mr. Rosenman, the "Reporting Persons"). The business address of FMC and FBMA is 399 Park Avenue, New York, New York 10022. 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. The sole general partner of FMC is First Manhattan LLC ("FMLLC"), a New York limited liability company, whose business address is 399 Park Avenue, New York, New York 10022. FBMA is registered as an investment adviser under the Investment Advisers Act of 1940, and its principal business is investment management. The sole managing members of FBMA are FMC and Samuel F. Colin ("Dr. Colin"). Dr. Colin is a Senior Managing Director and a limited partner of FMC and a managing member of FMLLC, and his principal business is acting as portfolio manager for the pooled investment vehicles listed in Item 5. His business address is 399 Park Avenue, New York, New York 10022. The principal business of Mr. Rosenman following his retirement in October 2012 has been to serve on the board of directors of various companies and his principal business address is 8420 Santaluz Village Green E. #100, San Diego, CA 92127. The principal business of Mr. Biro is to serve as Executive Vice President and Chief Financial Officer of Consolidated Graphics, Inc. and his principal business address is 5858 Westheimer, Suite 200, Houston, TX 77057. During the five years preceding the filing of this Statement, none of the Reporting Persons, FMLLC or Dr. Colin has been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) or a party to a civil proceeding of a judicial or administrative body of competent jurisdiction as a result of which it or any such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, United States federal or state securities laws or finding any violation with respect to such laws.

**Item 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION**

Item 3 of the Schedule 13D is hereby amended and restated in its entirety as follows:

The shares of Common Stock referred to in Item 5 as beneficially owned by First Manhattan were purchased by the entities listed therein for an aggregate consideration equal to $98,499,068. The source of the funds used to acquire the Common Stock reported herein as beneficially owned by First Manhattan is the working capital of the pooled investment vehicles managed by FMC or FBMA and the available funds in the Accounts (as defined in Item 5). An aggregate of 58,800 of such shares held by certain of the Accounts are held in commingled margin accounts, which may extend margin credit to such Accounts from time to time, subject to applicable federal margin regulations, stock exchange rules and credit policies. In such instances, the positions held in the margin accounts are pledged as collateral security for the repayment of debit balances in the accounts. The margin accounts bear interest at a rate based upon the broker’s call rate from time to time in effect. Because other securities are held in the margin accounts, it is not possible to determine the amounts, if any, of margin used to purchase such shares of Common Stock held by certain of the Accounts as reported herein.

Approximately $53,054 in the aggregate was used to purchase the Common Stock reported herein as beneficially owned by Mr. Rosenman. The source of the funds used to acquire the Common Stock reported herein as beneficially owned by Mr. Rosenman is the personal funds of Mr. Rosenman and none of the funds used to purchase such Common Stock were provided through borrowings of any nature.

Approximately $23,940 in the aggregate was used to purchase the Common Stock reported herein as beneficially owned by Mr. Biro. The source of the funds used to acquire the Common Stock reported herein as beneficially owned by Mr. Biro is the personal funds of Mr. Biro and none of the funds used to purchase such Common Stock were provided through borrowings of any nature.

**Item 4. PURPOSE OF TRANSACTION**

Item 4 of the Schedule 13D is hereby amended and supplemented by the addition of the following:

On April 24, 2013, outside legal counsel to FMC sent a letter to the Issuer's counsel in response to a letter from the Issuer's counsel again requesting that each of the Nominees for election to the Board at the Annual Meeting submit to interviews by the Nominating and Governance Committee of the Board. The letter from FMC's counsel reiterated that FMC was willing to have the Nominees submit to such interviews, but only if the interview process was not part of a plan to delay the Annual Meeting. The letter noted that the Issuer had again refused to publicly and firmly commit to holding the Annual Meeting no later than June 30, 2013, as requested by FMC. Accordingly, FMC declined to have its Nominees participate in the process. A copy of the April 24, 2013 response letter is attached as Exhibit 8 to the Schedule 13D and is incorporated by reference herein.

On April 25, 2013, outside legal counsel to FMC sent a letter in response to the Issuer's rejection of the demand by an affiliate of FMC to inspect certain books and records of the Issuer pursuant to Section 220 of the Delaware General Corporation Law (the "Demand"). The letter renewed FMC's demand to inspect the books and records originally requested in the Demand, in order to determine (i) whether the Issuer should have known that the European Union approval process for Qsymia was in jeopardy in 2011 and whether the Issuer failed to make appropriate and timely disclosure regarding such assessment, (ii) whether the Issuer made misleading statements in connection with potential marketing partnerships and whether the Issuer failed to timely disclose that it would not enter into a marketing partnership, (iii) whether certain former directors of the Issuer engaged in insider trading and whether the Board should have restricted such sales of Common Stock, and (iv) whether the Issuer failed to disclose material information to its stockholders given the Issuer's need to raise funds in the future. A copy of the April 25, 2013 response letter is attached as Exhibit 9 to the Schedule 13D and is incorporated by reference herein.

**Item 5. INTEREST IN SECURITIES OF THE ISSUER**

Paragraphs (a), (b) and (c) of Item 5 of the Schedule 13D are hereby amended and restated in their entirety as follows:

(a) The aggregate number and percentage of shares of Common Stock to which this Schedule 13D relates is 9,210,704 shares of Common Stock, constituting approximately 9.2% of the Issuer's currently outstanding Common Stock. Share ownership is reported as of the close of business on April 25, 2013. The aggregate number and percentage of shares of Common Stock reported herein are based upon the 100,660,029 shares of Common Stock outstanding as of February 19, 2013, as reported in the Issuer's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed with the SEC on February 26, 2013.

FMC may be deemed to beneficially own an aggregate of 9,203,704 shares of Common Stock, or approximately 9.1% of the outstanding Common Stock, which shares include (i) 3,353,275 shares of Common Stock, or approximately 3.3% of the outstanding Common Stock, directly held by First Health, L.P., First Health Limited and First Health Associates, L.P., pooled investment vehicles for which FMC acts as the investment advisor; (ii) 2,706,800 shares of Common Stock, or approximately 2.7% of the outstanding Common Stock, directly held by First BioMed, L.P. and First BioMed Portfolio, L.P., pooled investment vehicles for which FBMA acts as the investment advisor; and (iii) 3,143,629 shares of Common Stock, or approximately 3.1% of the outstanding Common Stock, held by (x) certain investment advisory accounts for which FMC acts as the investment advisor (the "Investment Accounts"), (y) discretionary brokerage accounts for which certain portfolio managers of FMC have discretionary authority (the "Brokerage Accounts"), and (z) accounts held and managed by partners and employees of FMC, including 500,000 shares of Common Stock held in Dr. Colin's personal account and 42,000 shares of Common Stock 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").

FBMA may be deemed to beneficially own an aggregate of 2,706,800 shares of Common Stock, or approximately 2.7% of the outstanding Common Stock, which shares are directly held by First BioMed, L.P. and First BioMed Portfolio, L.P., pooled investment vehicles for which FBMA acts as the investment advisor.

Mr. Rosenman may be deemed to beneficially own an aggregate of 5,000 shares of Common Stock, or approximately 0.0% of the outstanding Common Stock. Such shares of Common Stock are held in an Individual Retirement Account for the benefit of Mr. Rosenman.

Mr. Biro may be deemed to directly beneficially own an aggregate of 2,000 shares of Common Stock, or approximately 0.0% of the outstanding Common Stock.

For purposes of the Schedule 13D, the term "First Manhattan" refers to FMC, First Health, L.P., First Health Limited, First Health Associates, L.P., FBMA, First BioMed, L.P., First BioMed Portfolio, L.P. and the Accounts, collectively.

(b) FMC has sole voting power and sole dispositive power over the shares held for the accounts of First Health, L.P, First Health Limited, First Health Associates, L.P. and the Investment Accounts, by virtue of FMC's role as investment adviser to such entities and accounts, and accordingly FMC may be deemed to be a beneficial owner of such shares. FMC has shared voting power and shared dispositive power over the shares held for the accounts of First BioMed, L.P. and First BioMed Portfolio, L.P. by virtue of FMC's role as co-managing member of FBMA, the investment advisor to such entities, and accordingly FMC may be deemed to be a beneficial owner of such shares. In addition, FMC has, or may be deemed to have, shared voting power and shared dispositive power over the shares held for the Brokerage Accounts and Employee Accounts, by virtue of the discretionary authority provided to its portfolio managers and partners and employees, respectively, with respect to such accounts, and accordingly FMC, together with its portfolio managers and partners, may be deemed to be beneficial owners of such shares. FBMA has shared voting power and shared dispositive power over the shares held for the accounts of First BioMed, L.P. and First BioMed Portfolio, L.P. by virtue of FBMA's role as the investment adviser to such entities, and accordingly FBMA may be deemed to be a beneficial owner of such shares. Mr. Rosenman has sole voting power and sole dispositive power over the shares held in the Individual Retirement Account. Mr. Biro has sole voting power and sole dispositive power over the shares beneficially owned by him.

(c) Schedule A hereto (which is incorporated by reference in this Item 5 as if restated in full herein) sets forth all transactions with respect to the shares of Common Stock effected since the filing of Amendment No. 3.

**Item 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER**

Item 6 of the Schedule 13D is hereby amended and supplemented by the addition of the following:

The Reporting Persons are parties to an agreement with respect to the joint filing of the Schedule 13D and any amendments thereto. A copy of such agreement is attached as Exhibit 10 to the Schedule 13D and is incorporated by reference herein.

Other than the joint filing agreement described above, there are no contracts, arrangements, understandings or relationships among the Reporting Persons or between the Reporting Persons and any other person with respect to securities of the Issuer.

**Item 7. MATERIAL TO BE FILED AS EXHIBITS**

Item 7 of the Schedule 13D is hereby amended and supplemented by the addition of the following:

| Exhibit | Description |
|---|---|
| 8 | Letter, dated April 24, 2013 |
| 9 | Letter, dated April 25, 2013 |
| 10 | Joint Filing Agreement, dated April 26, 2013 |

## SIGNATURES

After reasonable inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: April 26, 2013

**FIRST MANHATTAN CO.**
By FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns
Name: Neal K. Stearns
Title: Managing Member

**FIRST BIOMED MANAGEMENT ASSOCIATES, LLC**
By FIRST MANHATTAN CO., Co-Managing Member
By FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns
Name: Neal K. Stearns
Title: Managing Member

By: /s/ Herman Rosenman
Herman Rosenman

By: /s/ Jon C. Biro
Jon C. Biro

## Schedule A

The following table sets forth all transactions with respect to the shares effected since the filing of Amendment No. 3 by any of the Reporting Persons. Except as otherwise noted, all such transactions in the table were effected in the open market, and the table includes commissions paid in per share prices.

**Jon C. Biro**

| Date of Transaction | Shares Purchased (Sold) | Price per Share ($) |
|---|---|---|
| 04/19/2013 | 2,000 | 11.97 |

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

David E. Rosewater
212.756.2208

Writer's E-mail Address
David.Rosewater@srz.com

April 24, 2013

**Via Electronic Mail and FedEx**

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
Att: Joseph E. Gilligan

Re: Nomination of Directors to the Board of VIVUS, Inc.

Dear Mr. Gilligan:

I am writing in response to your letter dated April 19, 2013 with respect to the request by the Nominating and Governance Committee (the "Committee") of the board of directors (the "Board") of VIVUS, Inc. (the "Company") that the candidates nominated by an affiliate of our client, First Manhattan Co. ("FMC"), for election to the Board at the Company's 2013 annual meeting of stockholders (the "Annual Meeting") submit to interviews by the Committee.

As I have previously indicated, FMC is willing to make its nominees available for interview by the Committee, but only if such interview process is undertaken in good faith and not as part of a plan to delay the Annual Meeting. Your letter indicated that the Board refuses to publicly and firmly commit to a specified date for the Annual Meeting not later than June 30, 2013. FMC had requested a public declaration by the Company for the benefit of all shareholders, not an agreement with a specific shareholder. For the past sixteen years VIVUS held every annual meeting by this date. In 2013, when it is in the Company's best interest to resolve the current uncertainty and hold a timely shareholder meeting more than ever before, they for the first time choose to delay the annual meeting. The Nominating Committee's refusal to commit to a near term date for completion of the interview process further heightens our concern that the Board is not acting with the urgency that the current circumstances demand.

These refusals force us to conclude that the "interview process" is really part of a plan by the Company to delay the Annual Meeting, and FMC will not have its nominees participate in such a process.

Very truly yours,

s/ David E. Rosewater
David E. Rosewater

cc: Linda M. Dairiki Shortliffe, M.D.
Chair, Nominating and Governance Committee of VIVUS, Inc.
John L. Slebir, Esq.
Vice President, Business Development and General Counsel of VIVUS, Inc.
Michael James Astrue
Jon C. Biro
Samuel F. Colin
Johannes J.P. Kastelein
David York Norton
Herman Rosenman
Rolf Bass
Melvin L. Keating

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David E. Rosewater
212.756.2208

Writer's E-mail Address
David.Rosewater@srz.com

April 25, 2013

**Via Electronic Mail and FedEx**

Potter Anderson Corroon LLP
1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
Attn: John F. Grossbauer

Re: Demand to Inspect Books and Records of VIVUS, Inc.

Dear Mr. Grossbauer:

We are writing on behalf of our client, First Manhattan Co. ("FMC"), in response to your letter dated April 18, 2013 (the "April 18 Letter"), to Neal Stearns on behalf of VIVUS, Inc. (the "Company"), rejecting the demand by an affiliate of FMC to inspect certain books and records of the Company pursuant to Section 220 of the Delaware General Corporation Law (the "Demand"). We disagree with your assertion that the Demand did not set forth a proper purpose to support FMC's right of inspection under Delaware law. The Demand explicitly stated that FMC's purpose for its requests in the Demand was "to determine (i) whether public statements made by the Company are accurate or misleading with respect to the Company's likelihood of success and interest in partnering with a large pharmaceutical company and the prospects for approval of Qnexa in the European Union, and (ii) whether the Board breached its fiduciary duties in connection with trades in the Company's common stock executed by members of the Board," both of which are proper purposes for stockholder inspection of books and records. However, given the Company's history of hiding information that companies in the drug development space typically provide to stockholders instead of providing transparency, it is not surprising that the Company refuses to comply with the disclosure requested in the Demand.

We are hereby renewing FMC's demand to inspect the books and records originally requested in the Demand and providing additional support that should leave no doubt as to the legitimate interest of stockholders in receiving this information for a proper purpose:

**I. Books and records relating to the Company's failure to obtain EU approval of Qnexa**

France was one of the two co-rappateurs that led the Qsymia[1] review process. The French co-rappateur was strongly opposed to EU approval of Qsymia due in part to domestic political pressure to reject any new obesity drug following the highly publicized scandal relating to an obesity drug, Mediator, released by the French pharmaceutical company Servier Laboratories, according to the Company. Given the French co-rappateur's vigorous opposition to Qsymia's EU approval, FMC is convinced that the co-rappateur's concerns related to granting approval must have been articulated in the Committee for Medical Products for Human Use's (the "CHMP") 120 Day List of Questions for Qnexa (the "120-Day Questions"), the 180 Day List of Outstanding Issues (the "LOI") and the Company's corresponding responses. Obtaining European Union approval would have been of material value to the Company and FMC believes that the Company may have failed to publicly disclose detailed information regarding the 120-Day Questions, the LOI and the Company's corresponding responses, which would have revealed in a more timely manner to stockholders that European Union approval was unlikely to be obtained. In addition, FMC believes the Company failed to adequately highlight for investors the risks involved with having France as their co-rappateur.

In its Annual Report on Form 10-K for the year ended December 31, 2011 (the "2011 10-K"), the Company provided a brief description of the topics covered by the 120-Day Questions but failed to disclose details regarding the issues raised by the CHMP in the 120-Day Questions. The Company also failed to disclose what was contained in its response to the 120-Day Questions. Similarly, the Company disclosed in the 2011 10-K that it received the LOI from the CHMP in January 2012 and provided a brief description of the requests for additional information contained therein, but failed to disclose any details regarding the issues raised in the LOI or what was contained in the Company's responses to the LOI.

Based on the foregoing, FMC believes that the Company should have known that the European Union approval process for Qysmia was in jeopardy at the time the 2011 10-K was filed, but deliberately failed to include such assessment or any related details in its public disclosure of the 120-Day Questions and LOI. Accordingly, FMC made the demands listed below to uncover particularized facts with respect to the Company's possible violation of the securities laws by failing to make appropriate and timely disclosure and, accordingly, whether the board of directors of the Company (the "Board") breached its fiduciary duties.

[1] Qnexa is currently sold in the United States under the trade name Qsymia and is currently labeled with the trade name Qsiva in the European Union. All references to Qnexa, Qsymia and Qsiva herein are intended to reference the product generally and are not limited to the product as it was or currently is marketed in any particular geographic region.

Based on the foregoing, we are again requesting that the Company provide FMC with the following books and records:

(a) all information and documents pertaining to the 120-Day Questions and any related communications between the Company and any representatives of the CHMP, including but not limited to (i) copies of the 120-Day Questions and any information received from the CHMP during the September 2011 meeting between the CHMP and the Company, (ii) any reports or advice provided to the Board or any committee thereof by consultants regarding the 120-Day Questions, and (iii) the minutes of Board meetings and meetings of any committee thereof to the extent such meetings reflect deliberations regarding the 120-Day Questions and any such related discussions;

(b) all information and documents pertaining to any response by the Company to the 120-Day Questions and any related communications between the Company and any representatives of the CHMP, including but not limited to (i) copies of any response by the Company to the 120-Day Questions, (ii) any reports or advice provided to the Board or any committee thereof by consultants regarding the Company's response to the 120-Day Questions, and (iii) the minutes of Board meetings and meetings of any committee thereof to the extent such meetings reflect deliberations regarding any response to the 120-Day Questions and any such related discussions;

(c) all information and documents pertaining to the LOI from the European Medicines Agency regarding the Qnexa Marketing Authorization Application for the European Union and any deliberations concerning the prospects for European Union approval of Qnexa, including but not limited to (i) any reports or advice provided to the Board or any committee thereof by consultants regarding the LOI or prospects for European Union approval, and (ii) the minutes of Board meetings and meetings of any committee thereof held between January 1, 2012 and June 30, 2012 to the extent such meetings reflect deliberations regarding the LOI or the prospects for European Union approval of Qnexa; and

(d) all information and documents pertaining to the Company's response to the LOI, including but not limited to (i) copies of any response by the Company to the LOI, (ii) any reports or advice provided to the Board or any committee thereof by consultants regarding any response to the LOI, and (iii) the minutes of Board meetings and meetings of any committee thereof held between January 1, 2012 and June 30, 2012 to the extent such meetings reflect deliberations regarding any such response by the Company to the LOI.

**II. Books and records relating to potential marketing partnerships**

In its November 3, 2009 earnings call, representatives of the Company stated that the Company was discussing potential marketing partnerships with multiple parties and that such discussions were "going rapidly and going well". FMC believes that, in view of the Company's failure to partner with a large pharmaceutical company, the Company's statements that such discussions were "going rapidly and going well" were misleading and the Company may have failed to timely disclose that they were not going to enter into a marketing partnership with a large pharmaceutical company. In addition, FMC believes that the failure of the Company to enter into a marketing partnership with a large pharmaceutical company constitutes mismanagement, resulting from management's misguided desire to retain absolute control over its product, and a breach by the Board of its fiduciary duties, as entering into such a partnership would have been in the Company's stockholders' best interests. Accordingly, FMC made the demand listed below to uncover particularized facts with respect to the Company's possible violation of the securities laws by failing to make appropriate and timely disclosure, and with respect to whether the Board breached its fiduciary duties.

Based on the foregoing, we are again requesting that the Company provide FMC with the following books and records:

(a) all information and documents pertaining to any deliberations concerning any potential commercial marketing partnership between the Company and any third party in connection with the launch, marketing and commercialization of Qsymia in the United States, including but not limited to (i) any reports or advice provided to the Board or any committee thereof by consultants, and (ii) minutes of any Board meetings and meetings of any committee thereof held between September 1, 2009 and March 31, 2010 at which any potential commercial marketing partnership was discussed.

**III. Books and records relating to the FDA Advisory Committee's recommendation against approval of Qnexa and stock sales by the Company's resigning directors**

On April 30, 2010, the Company publicly disclosed in a Current Report on Form 8-K that, on April 27, 2010, Graham Strachan ("Mr. Strachan") notified the Company that he would not be standing for re-election at the Company's 2010 annual meeting but would continue to serve as a director until such annual meeting. The 8-K further disclosed, however, that on April 30, 2010, Mr. Strachan and Virgil A. Place, M.D. ("Dr. Place") both notified the Company that they were resigning from the Board effectively immediately. Just 3 and 6 days prior to the meeting of the Endocrinologic and Metabolic Drugs Advisory Committee (the "Advisory Committee") of the U.S. Food and Drug Administration (the "FDA") regarding its recommendation as to FDA approval of Qnexa, Mr. Strachan sold 150,000 shares of the Company's common stock at a price of $11.52 per share and 35,000 shares at a price of $12.44 per share, respectively, constituting an aggregate of approximately 93.6% of his Company holdings (based on the total number of shares previously held, as disclosed in the Company's 2010 proxy statement). After the Advisory Committee's recommendation that the FDA not approve Qnexa was publicly disclosed on July 15, 2010, the price of Company common stock dropped to approximately $5.00 per share.

FMC believes that the Board, Mr. Strachan and Dr. Place were each aware that the Advisory Committee was likely to recommend against FDA approval of Qnexa when Mr. Strachan and Dr. Place resigned, yet the Board failed to require that the resigning directors not trade in the Company's common stock until the Advisory Committee's decision was publicly disclosed and Mr. Strachan transacted the foregoing sales on the basis of material non-public information regarding the Company's prospects. Accordingly, FMC made the demands listed below to uncover particularized facts with respect to whether the sales by Mr. Strachan, and the Board's having permitted such sales, violated the securities laws and constituted a breach of fiduciary duty by the Board.

Based on the foregoing, we are again requesting that the Company provide FMC with the following books and records:

(a) all information and documents pertaining to any deliberations concerning the July 15, 2010 review of the Company's New Drug Application for Qnexa by the Advisory Committee and any deliberations concerning the prospects for the Advisory Committee's recommendation of Qnexa, including but not limited to (i) any reports or advice provided to the Board or any committee thereof by consultants regarding the Advisory Committee's review or prospects for the Advisory Committee's recommendation of Qnexa, and (ii) the minutes of Board meetings and meetings of any committee thereof held between January 1, 2010 and July 15, 2010 to the extent such meetings reflect deliberations regarding the Advisory Committee's review or prospects for the Advisory Committee's recommendation of Qnexa;

(b) all information and documents pertaining to any communications between the Company, including the senior executives of the Company or members of the Board, and the FDA and/or the Advisory Committee concerning the July 15, 2010 review of the Company's New Drug Application for Qnexa by the Advisory Committee and any such communications concerning the prospects for the Advisory Committee's recommendation of Qnexa, including but not limited to (i) any reports or advice provided to the Board or any committee thereof by consultants regarding any such communications with the FDA or the Advisory Committee or prospects for the Advisory Committee's recommendation of Qnexa, and (ii) the minutes of Board meetings and meetings of any committee thereof held between January 1, 2010 and July 15, 2010 to the extent such meetings reflect such communications with the FDA or Advisory Committee or prospects for the Advisory Committee's recommendation of Qnexa;

(c) all information and documents pertaining to any deliberations concerning the resignations of Mr. Strachan and Dr. Place as members of the Board including but not limited to (i) copies of any letters of resignation in connection with the resignations of Mr. Strachan and Dr. Place, and (ii) the minutes of Board meetings and meetings of any committee thereof held between January 1, 2010 and July 15, 2010 at which such resignations were discussed;

(d) all information and documents pertaining to any trades in the Company's common stock executed by Mr. Strachan or Dr. Place between April 30, 2010 and July 20, 2010 to the extent such information is not publicly available on EDGAR; and

(e) all information and documents pertaining to any deliberations of the Board or any committee thereof concerning any potential restrictions to be placed on trades effected in the Company's common stock by members of the Board and/or the Company's management and any deliberations or investigations conducted by the Board in connection with any trades in the Company's common stock executed by Mr. Strachan or Dr. Place between April 30, 2010 and July 20, 2010, including but not limited to (i) copies of any insider trading policies of the Company in effect from January 1, 2010 through the date hereof, (ii) any reports or advice provided to the Board or any committee thereof by consultants regarding insider trading restrictions and policies of the Company, and (iii) the minutes of Board meetings and meetings of any committee thereof held between April 30, 2010 and July 20, 2010, to the extent such meetings reflect deliberations regarding potential or adopted insider trading restrictions of the Company or trading activity by Mr. Strachan or Dr. Place.

**IV. Books and records relating to the Company's permitted indebtedness**

On March 26, 2013, the Company filed with the SEC a copy of the Purchase and Sale Agreement, dated March 25, 2013, between the Company and BioPharma Secured Investments III Holdings Cayman LP, in which the maximum amount of indebtedness the Company was permitted to incur thereunder was redacted. The maximum amount of indebtedness the Company is permitted to incur is material to stockholders because, in view of the Company's historical and expected future cash expenditures, the Company will be required to raise additional funds in the future. Investment decisions made by the Company's stockholders may be materially affected based on whether the Company will be able to raise cash through the incurrence of debt or if it must rely on the issuance of equity, which will be dilutive to the Company's current stockholders. Moreover, the amount of a company's permitted indebtedness is routinely made publicly available by other companies. Although the Securities and Exchange Commission granted the Company's application to keep such redacted information confidential, such determination was based on the Company's representation that the information qualifies as "confidential commercial or financial information" under the Freedom of Information Act. FMC does not believe that the Company's maximum amount of permitted indebtedness constitutes "confidential commercial or financial information". The purpose of the demand listed below is to uncover particularized facts with respect to whether the Company failed to disclose material information to its stockholders resulting in a breach of fiduciary duty, and to ascertain the Company’s condition.

Based on the foregoing, we are again requesting that the Company provide FMC with the following books and records:

(a) an un-redacted excerpt of the defined term "Permitted Indebtedness" as set forth in the Purchase and Sale Agreement, dated as of March 25, 2013, by and between VIVUS, Inc. and BioPharma Secured Investments III Holdings Cayman LP, filed by the Company with the Securities and Exchange Commission on March 26, 2013 as Exhibit 10.1 to the Current Report on Form 8-K.

We have provided the above additional information with respect to FMC's requests not because we believe we are required to do so, but to evidence that FMC initially set out in the Demand a proper purpose supporting its right to inspect such books and records of the Company. Accordingly, we hereby renew the Demand. Please notify us promptly whether the Company will comply.

Very truly yours,

/s/ David E. Rosewater
David E. Rosewater

cc: John L. Slebir, Esq.
Joseph E. Gilligan, Esq.
Jon Layman, Esq.
Neal K. Stearns
Marc Weingarten, Esq.

EXHIBIT 10

**Joint Filing Agreement, dated April 26, 2013**

PURSUANT TO RULE 13d-1(k)

The undersigned acknowledge and agree that the foregoing statement on Schedule 13D is filed on behalf of each of the undersigned and that all subsequent amendments to this statement on Schedule 13D may be filed on behalf of each of the undersigned without the necessity of filing additional joint filing agreements. The undersigned acknowledge that each shall be responsible for the timely filing of such amendments, and for the completeness and accuracy of the information concerning it contained herein and therein, but shall not be responsible for the completeness and accuracy of the information concerning the others, except to the extent that it knows that such information is inaccurate.

Dated: April 26, 2013.

**FIRST MANHATTAN CO.**
By FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns
Name: Neal K. Stearns
Title: Managing Member

**FIRST BIOMED MANAGEMENT ASSOCIATES, LLC**
By FIRST MANHATTAN CO., Co-Managing Member
By FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns
Name: Neal K. Stearns
Title: Managing Member

By: /s/ Herman Rosenman
Herman Rosenman

By: /s/ Jon C. Biro
Jon C. Biro