

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934
(Amendment No. 8)*

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)

July 16, 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. ☐

(Page 1 of 11 Pages)

* 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 First Manhattan Co.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 New York	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 5,990,709 shares of Common Stock
	8	SHARED VOTING POWER 3,998,895 shares of Common Stock
	9	SOLE DISPOSITIVE POWER 5,990,709 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 3,998,895 shares of Common Stock
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 9,989,604 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) 9.9% (see Item 5)	
14	TYPE OF REPORTING PERSON BD; IA; PN	

1	NAME OF REPORTING PERSON First BioMed Management Associates, LLC	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 New York	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 2,706,800 shares of Common Stock
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 2,706,800 shares of Common Stock
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 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) 2.7% (see Item 5)	
14	TYPE OF REPORTING PERSON IA	

1	NAME OF REPORTING PERSON Herman Rosenman	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 United States	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 5,000 shares of Common Stock
	8	SHARED VOTING POWER 0
	9	SOLE DISPOSITIVE POWER 5,000 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 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) 0.0% (see Item 5)	
14	TYPE OF REPORTING PERSON IN	

1	NAME OF REPORTING PERSON Jon C. Biro	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 United States	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 4,000 shares of Common Stock
	8	SHARED VOTING POWER 0
	9	SOLE DISPOSITIVE POWER 4,000 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 4,000 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) 0.0% (see Item 5)	
14	TYPE OF REPORTING PERSON IN	

1	NAME OF REPORTING PERSON David York Norton	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 Australia	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 1,500 shares of Common Stock
	8	SHARED VOTING POWER 0
	9	SOLE DISPOSITIVE POWER 1,500 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 1,500 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) 0.0% (see Item 5)	
14	TYPE OF REPORTING PERSON IN	

1	NAME OF REPORTING PERSON Rolf Bass	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 Germany	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 100 shares of Common Stock
	8	SHARED VOTING POWER 0
	9	SOLE DISPOSITIVE POWER 100 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 100 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) 0.0% (see Item 5)	
14	TYPE OF REPORTING PERSON IN	

1	NAME OF REPORTING PERSON Melvin L. Keating	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) S (b) £	
3	SEC USE ONLY	
4	SOURCE OF FUNDS 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 United States	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:	7	SOLE VOTING POWER 900 shares of Common Stock
	8	SHARED VOTING POWER 0
	9	SOLE DISPOSITIVE POWER 900 shares of Common Stock
	10	SHARED DISPOSITIVE POWER 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON 900 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) 0.0% (see Item 5)	
14	TYPE OF REPORTING PERSON IN	

This Amendment No. 8 ("Amendment No. 8") 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"), Amendment No. 3 to the Original Schedule 13D, filed with the SEC on April 17, 2013 ("Amendment No. 3"), Amendment No. 4 to the Original Schedule 13D, filed with the SEC on April 26, 2013 ("Amendment No. 4"), Amendment No. 5 to the Original Schedule 13D, filed with the SEC on May 23, 2013 ("Amendment No. 5") Amendment No. 6 to the Original Schedule 13D, filed with the SEC on April 26, 2013 ("Amendment No. 6") and Amendment No. 7 to the Original Schedule 13D, filed with the SEC on July 3, 2013 ("Amendment No. 7" and together with the Original Schedule 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6 and this Amendment No. 8, 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. 8 have the meanings set forth in the Schedule 13D. This Amendment No. 8 amends Items 4 and 7 as set forth below.

As a result of the nomination by an affiliate of the Reporting Persons of Alexander J. Denner, Ph.D. ("Dr. Denner") and together with his affiliated funds and their investment manager, the "Denner Parties", as described in Item 4 of Amendment No. 5, the Reporting Persons and the Denner Parties may be deemed to be a "group" pursuant to Rule 13d-5(b)(1) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The security interests reported in this Schedule 13D do not include security interests owned by the Denner Parties. This Schedule 13D only reports information on the Reporting Persons and does not report any acquisition or disposition of Common Stock by the Denner Parties.

Item 4. PURPOSE OF TRANSACTION

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

On July 16, 2013, FMC filed a verified complaint (the "Verified Complaint") in the Court of Chancery of the State of Delaware (the "Court") seeking an order from the Court granting the following relief: (a) enjoining the Issuer and its representatives from taking any actions to solicit proxies or votes for the Annual Meeting; (b) directing that the inspector of elections immediately certify the results of the election of directors based upon the votes present and prepared to be voted at the noticed annual meeting of stockholders of the Issuer, scheduled to be held on July 15, 2013; and (c) enjoining the incumbent directors of the Issuer from taking any actions as directors of the Issuer, including any further actions in connection with the Annual Meeting.

The foregoing summary of the Verified Complaint is qualified in its entirety by the full text of the Verified Complaint, a copy of which is attached as Exhibit 15 to this Schedule 13D.

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:

<u>Exhibit</u>	<u>Description</u>
15	Verified Complaint, dated July 16, 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: July 16, 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

By: /s/ David York Norton

David York Norton

By: /s/ Rolf Bass

Rolf Bass

By: /s/ Melvin L. Keating

Melvin L. Keating

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FIRST MANAHATTAN CO.,)	
)	
Plaintiff,)	
)	
-against-)	
)	
LELAND F. WILSON, PETER Y. TAM,)	
MARK B. LOGAN, J. MARTIN CARROLL,)	C.A. No. _____
CHARLES J. CASAMENTO, ERNEST)	
MARIO, PH.D., JORGE PLUTZKY, M.D.,)	
LINDA M. DAIRIKI SHORTLIFFE, M.D.,)	
ROBERT N. WILSON,)	
)	
Defendants,)	
)	
and)	
VIVUS, INC., a Delaware)	
corporation,)	
)	
Nominal Defendant.)	
)	

VERIFIED COMPLAINT

Plaintiff First Manhattan Co. (“FMC” or “Plaintiff”), by and through its undersigned counsel, alleges for its Verified Complaint as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action as a stockholder of VIVUS, Inc. (“VIVUS” or the “Company”) for declaratory and injunctive relief to remedy the improper attempt of the incumbent directors of VIVUS (the “Incumbent Directors” or “Director Defendants”) to entrench themselves in office by abusing the corporate machinery in violation of their fiduciary duties and Delaware law.

2. The 2013 annual meeting of stockholders of VIVUS (the “Annual Meeting”) was noticed to take place on July 15, 2013. On June 3, 2013, FMC, the largest stockholder of the Company, filed definitive proxy materials with the U.S. Securities and Exchange Commission and commenced the solicitation of proxies to replace the nine Incumbent Directors of VIVUS at the Company’s Annual Meeting with its own slate of highly-qualified and independent nominees. After a hard fought proxy fight, as of Sunday, July 14, 2013, FMC was poised to deliver sufficient votes at the Annual Meeting to replace the Incumbent Directors with its nominees.

3. However, rather than allow the VIVUS stockholders to decide the future of the Company for themselves, the Incumbent Directors instead attempted to thwart the proxy solicitation and interfere with the stockholder franchise. Just hours before the election of directors at the noticed Annual Meeting was to take place, VIVUS issued a press release stating that the VIVUS Board had directed that the Annual Meeting be adjourned for three days, purportedly to allow FMC to correct “false and misleading statements.” Defendants’ transparent attempt to entrench themselves in office by purporting to adjourn the Annual Meeting is a blatant breach of their fiduciary duties and Delaware law.

4. Accordingly, Plaintiff seeks the entry of an Order to remedy Defendants’ breaches of fiduciary duty by (i) enjoining Defendants and their representatives from taking any actions to solicit proxies or votes for the Annual Meeting; (ii) directing that the inspector of elections immediately certify the results of the election of directors based upon the votes present and prepared to be voted at the noticed July 15 Annual Meeting; and (iii) enjoining the Incumbent Directors from taking or purporting to take any actions as directors of the Company, including without limitation, any further actions in connection with the Annual Meeting.

THE PARTIES

5. Plaintiff First Manhattan Co. is an owner-managed and operated investment advisory firm. FMC and its affiliates currently own approximately 9.9 percent of the outstanding shares of VIVUS. FMC has been a stockholder of the Company since 2008.

6. Defendant VIVUS is a Delaware corporation with its principal place of business in Mountain View, California. VIVUS is a biopharmaceutical company that seeks to commercialize and develop next-generation therapies to address unmet needs in obesity, sleep apnea, diabetes and sexual health.

7. Defendant Leland F. Wilson has served as a director of the Company and the Chief Executive Officer since 1991.

8. Defendant Peter Y. Tam has served as a director and the President of the Company since 2009.

9. Defendant Mark B. Logan has served as a director of the Company since 1999 and as Chairman of the Board since 2007.

10. Defendant J. Martin Carroll has served as a director of the Company since May 9, 2013.

11. Defendant Charles J. Casamento has served as a director of the Company since 2008.

12. Defendant Ernest Mario, Ph.D. has served as a director of the Company since 2012.

13. Defendant Jorge Plutzky, M.D. has served as a director of the Company since May 10, 2013.

14. Defendant Linda M. Dairiki Shortliffe, M.D. has served as a director of the Company since 1999.

15. Defendant Robert N. Wilson has served as a director of the Company since 2013.

BACKGROUND

16. While the Company has had success in developing a potential blockbuster obesity drug known as Qsymia, the Incumbent Directors have failed miserably in their efforts to achieve commercial success. The Incumbent Directors failed to prepare for the transition from a drug development organization to a highly experienced commercial organization. As a result, since last summer when the FDA approved Qsymia, the Company has lost over 60% of its stock value.

17. Accordingly, on March 7, 2013, FMC delivered a notice to the Company indicating FMC's intent to nominate six candidates to stand for election at the Company's 2013 Annual Meeting.

18. On April 30, 2013, the Company announced that it had expanded the board from six to seven members and had filled the new vacancy. On May 13, 2013, the Company announced that the Board had been expanded from seven to nine directors and the vacancies had been filled. As a result, on May 23, 2013, FMC notified the Company that it intended to nominate an additional three directors for election at the Annual Meeting.

19. On May 13, 2013, the Company announced that its Board had noticed the Annual Meeting to be held on July 15, 2013 at the Company's corporate office in Mountain View, California at 8:00 a.m. PST. Among other things, the election of the nine members of the Company's Board would take place at the Annual Meeting.

20. On June 3, 2013, FMC filed its definitive proxy materials with the Securities and Exchange Commission to, among other things, solicit proxies for the election of FMC's nine nominees for election as directors at the Annual Meeting. In connection therewith,

FMC engaged MacKenzie Partners, Inc. to assist in the solicitation of proxies for the Annual Meeting.

21. Since that time, FMC and the Incumbent Board have engaged in a hard fought proxy contest in anticipation of the election of directors at the Annual Meeting scheduled to take place on July 15, 2013. During this time, representatives of FMC and the Incumbent Board also engaged in a number of conversations regarding potentially resolving the proxy fight. However, those discussions have not been successful.

22. Upon information and belief, as of July 14, 2013, the day before the noticed Annual Meeting, FMC was poised to deliver sufficient votes at the Annual Meeting to take place the next day to elect its entire slate of nominees.

23. However, rather than allow the VIVUS stockholders to freely exercise their voting rights with respect to ***their*** company, the Incumbent Directors instead undertook a course of improper conduct designed to entrench themselves in office and impede the exercise of the stockholders' franchise.

24. On the evening of July 14, 2013, just hours before the election of directors was to take place, the Incumbent Directors caused the Company to issue a press release announcing that the VIVUS Board had directed that the Annual Meeting be adjourned until July 18, 2013. According to the press release, the adjournment was purportedly necessary to allow FMC to correct unspecified "false and misleading statements" regarding the recommendation of Institutional Shareholders Services.

25. On July 15, 2013, the President of the Company, Mr. Tam, commenced the noticed Annual Meeting at 8:00 a.m. PST and immediately purported to adjourn the meeting over Plaintiff's objection. Plaintiff voted its shares by proxy at the Annual Meeting against any adjournment.

26. Defendants' stated reasons for adjourning the meeting are a transparent pretext intended as part of a misguided attempt to entrench the Incumbent Directors in office.

27. Defendants' misuse of the corporate machinery to impede the exercise of the stockholders franchise at the Annual Meeting constitutes a clear violation of their fiduciary duties under Delaware law.

28. Moreover, the adjournment is also invalid under Delaware law since the VIVUS Board lacked the authority to adjourn a meeting of stockholders. VIVUS's bylaws explicitly provide that the chairman of the meeting is only authorized to adjourn the meeting if a quorum is not present or represented at the meeting. Defendants have not suggested, nor could they suggest, that there were insufficient votes present at the commencement of the Annual Meeting on July 15, 2013 to satisfy the quorum requirement. Consequently, the bylaws only permitted the meeting to be adjourned if approved by "the vote of the holders of a majority of the stock having voting power present in person or represented by proxy". Because the adjournment was never approved by the VIVUS stockholders, the purported adjournment by the VIVUS Board was invalid.

29. Upon information and belief, absent Defendants' attempted manipulation of the corporate machinery and violation of their fiduciary duties, all of Plaintiff's nominees would have been elected as directors at the July 15, 2013 Annual Meeting.

30. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order granting the following relief:

- a. Enjoining Defendants and their representatives from taking any actions to solicit proxies or votes for the Annual Meeting;
- b. Directing that the inspector of elections immediately certify the results of the election of directors based upon the votes present and prepared to be voted at the noticed July 15 Annual Meeting;

- c. Enjoining the Incumbent Directors from taking or purporting to take any actions as directors of the Company, including without limitation, any further actions in connection with the Annual Meeting.;
- d. Awarding Plaintiff its costs and expenses in bringing and prosecuting this action, including its attorneys' fees;
- e. Granting such other and further relief as the Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ David J. Teklits

David J. Teklits (#3221)

Christopher P. Quinn (#5823)

1201 N. Market Street

P.O. Box 1347

Wilmington, DE 19899-1347

(302) 658-9200

Attorneys for Plaintiff First Manhattan Co.

OF COUNSEL:

SCHULTE ROTH & ZABEL LLP

919 Third Avenue

New York, NY 10022

(212) 756-2000

July 16, 2013