

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:

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On July 16, 2013, First Manhattan Co. and its affiliates (“First Manhattan”) issued a press release announcing that First Manhattan filed litigation against VIVUS, Inc. (“Vivus”) in the Court of Chancery of the State of Delaware. The press release states that First Manhattan is seeking declaratory and injunctive relief to remedy the attempt of the incumbent directors of Vivus to adjourn the 2013 annual meeting of stockholders and deny stockholders their right to vote on the future of Vivus. A copy of the press release is filed herewith as Exhibit 1.

Also on July 16, 2013, First Manhattan issued a second press release announcing that First Manhattan continues to seek a settlement with the board of directors of Vivus (the “Board”) and that, if all nine of First Manhattan’s nominees for election to the Board are elected at the Annual Meeting, First Manhattan will add three directors currently serving on the Board of Vivus to the newly reconstituted board. A copy of the press release is filed herewith as Exhibit 2.

Also on July 16, 2013, First Manhattan posted additional references to [www.ourmaterials.com/VVUS/](http://www.ourmaterials.com/VVUS/). Copies of the additional references are filed herewith as Exhibit 3.

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## EXHIBIT 1

### FIRST MANHATTAN ASKS DELAWARE COURT TO CERTIFY RESULTS OF VIVUS' ANNUAL MEETING

#### *Seeks Declaratory And Injunctive Relief To Remedy Vivus Board Efforts to Entrench Themselves*

NEW YORK, July 16, 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 announced that it has filed litigation against Vivus in the Court of Chancery of the State of Delaware. In the lawsuit, FMC seeks declaratory and injunctive relief to remedy the illegal attempt of the incumbent directors of Vivus to entrench themselves in office by adjourning the Annual Meeting of Stockholders and denying stockholders their right to vote on the future of the company.

Specifically, FMC asks the Court for an Order granting the following relief:

- Enjoining Vivus and its representatives from taking any actions to solicit proxies or votes for the Annual Meeting;
- 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
- Enjoining the incumbent directors of Vivus from taking any actions as directors of the Company, including any further actions in connection with the Annual Meeting.

“We have taken legal action against Vivus and the sitting board after their egregious attempt to disenfranchise Vivus’ stockholders,” said Sam Colin, Senior Managing Director at FMC. “Vivus didn’t like what it saw on the scoreboard so it decided to move the goal post. The Vivus directors need to be held accountable for their actions, so we are seeking immediate injunctive relief.”

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).

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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.

#### **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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or  
Mackenzie Partners  
Larry Dennedy, 212-929-5239  
Charlie Koons, 212-929-5708

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**FIRST MANHATTAN CONTINUES TO SEEK SETTLEMENT DESPITE BAD FAITH NEGOTIATING TACTICS  
FROM VIVUS' EXISTING BOARD**

*Three Current Vivus Directors Will Be Invited To Join Board If FMC Nominees Are Elected*

NEW YORK, July 16, 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 announced that it continues to seek a settlement with the Vivus board of directors despite the bad faith negotiating tactics and the disregard for the principles of corporate democracy demonstrated to date by the board. If all nine FMC nominees are elected, FMC will invite three current Vivus directors to join the newly reconstituted board.

First Manhattan held numerous meetings and phone conversations over the past several days with representatives of the Vivus board, seeking an equitable settlement to resolve the proxy contest for the benefit of all shareholders. On Sunday evening, July 14<sup>th</sup>, FMC concluded a conversation with a Vivus board member with the understanding that FMC would receive a response to the latest settlement proposal. Instead, the Vivus board of directors terminated settlement discussions by responding with a press release stating its decision to adjourn the meeting, effectively denying shareholders their right to vote on the future of the company.

While we view these efforts to disenfranchise Vivus shareholders as egregious, we remain committed to doing what is best for the company and its shareholders, and we intend to invite three current Vivus directors to join the newly reconstituted board in the event that all nine FMC nominees are elected. We are committed to realizing value at Vivus for the benefit of all shareholders.

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.

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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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Mackenzie Partners

Larry Dennedy, 212-929-5239

Charlie Koons, 212-929-5708

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**Vivus - Why Change Is Needed Now**

First Manhattan Co.

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**Press releases and other documents**

- [First Manhattan Continues to Seek Settlement Despite Bad Faith Negotiating Tactics From Vivus's Existing Board-July 16th 2013](#) [ PDF ]
  - [First Manhattan Asks Delaware Court to Certify Results of Vivus' Annual Meeting-July 16th, 2013](#) [ PDF ]
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