

SCHEDULE 14A
Consent 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.
Michael James Astrue
Jon C. Biro
Samuel F. Colin
Johannes J.P. Kastelein
David York Norton
Herman Rosenman
Rolf Bass
Melvin L. Keating**

(Name of Person(s) Filing Consent 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.
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- 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):

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5) Total fee paid:

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1) Amount Previously Paid:

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3) Filing Party:

4) Date Filed:

On April 17, 2013, First Manhattan Co. and its affiliates (collectively, "First Manhattan") filed a Schedule 13D Amendment with the Securities and Exchange Commission which attached as an exhibit a second letter from First Manhattan to VIVUS, Inc. ("Vivus"). Such letter responded to a second request from Vivus's counsel that each of the individuals nominated by First Manhattan (the "Nominees") for election to the board of directors of Vivus (the "Board") at its 2013 annual meeting of stockholders (the "Annual Meeting") submit to interviews by the Nominating and Governance Committee of the Board. The letter reiterated First Manhattan's willingness to have the Nominating and Governance Committee interview the Nominees but also noted that Vivus had failed to commit to holding the Annual Meeting no later than June 30, 2013 and the Nominating and Governance Committee had failed to commit to complete the requested interview process by April 21, 2013, as First Manhattan had requested as a condition to making the Nominees available in order to demonstrate Vivus's good faith in making such a request. The letter reiterated First Manhattan's requests and expressed First Manhattan's belief as to the importance of a timely Annual Meeting in order to resolve the uncertainty surrounding the Board's composition. A copy of the letter is attached as Exhibit 1.

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April 15, 2013

Via Electronic Mail and FedEx

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

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

Dear Mr. Gilligan:

I am writing in response to your letter dated April 12, 2013 (the "April 12 Letter") 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 (the "Nominees") 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 indicated in my previous letter, while FMC is willing to make the Nominees available for interview by the Committee, and to have them complete the requested questionnaires, it is concerned that the request was not made in good faith but rather as part of a plan to delay the Annual Meeting and disrupt the stockholders' exercise of their right to select a board of their choosing. That is the reason we asked that the Board publicly commit to holding the meeting on a specified date no later than June 30, 2013, and that the Committee complete the interview process by April 21, 2013. Their refusals to do so has only heightened our concern about the bona fides of the request for interviews.

Your letter indicates that the Board is "fully aware" of the provisions of Section 211 of the Delaware General Corporation law, and that it is the Board's "current intention" to schedule the 2013 meeting within the 13 month period referred to in that Section. As you and the Board must be aware, Section 211 does not require that a company hold its annual meeting within 13 months of its prior meeting--it simply states that if a company fails to do so, then a stockholder can ask the Chancery Court to order it to hold the meeting. The Board could change its "current intent" tomorrow.

FMC believes it is particularly important, and in the stockholders' best interests, that the Annual Meeting be held on a timely basis this year. Doing so will resolve the uncertainty around the board's composition and will allow the new board to promptly address the Company's strategic direction in light of its continuing cash burn and the expected near-term introduction of a drug which will directly compete with Qsymia. We note that the Company has held its annual meeting in every one of the last sixteen years prior to June 30, and in several cases held it much closer to the "third Tuesday in May" default date in its bylaws. There certainly is no reasonable justification for delay beyond June 30 in this critical year.

Your letter further indicates that the Committee "is actively evaluating candidates", "intends" to act "expeditiously" and has a "goal" of completing its review "in the next several weeks". While these aspirational statements may sound promising, the fact is that your response, in reality, is an abject refusal to commit to a timeframe.

FMC believes that the Board and the Committee have refused to commit to a firm date for the Annual Meeting and for completion of the interviews because they are engaged in a desperate search for board nominees, other than the FMC Nominees, that the stockholders might find more palatable than the incumbent directors, and the Board and the Committee do not know how long the search will take. FMC is unsympathetic, having already identified its very highly qualified nominees.

Notwithstanding its serious reservations, FMC continues to be willing to submit its nominees for interview by the Nominating Committee, provided that the Company publicly and firmly commit to a specified meeting date no later than June 30, 2013, and that the Committee firmly commit to a near-term date for completion of the interview process.

Very truly yours,

/s/ David 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.
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Jon C. Biro
Samuel F. Colin
Johannes J.P. Kastelein
David York Norton
Herman Rosenman
Rolf Bass
Melvin L. Keating