

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

VIVUS, INC.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

94-3136179

(I.R.S. Employer
Identification Number)

**1172 CASTRO STREET
MOUNTAIN VIEW, CA 94040**
(Address of principal executive offices)

1994 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

Leland F. Wilson
Chief Executive Officer
VIVUS, Inc.
1172 Castro Street
Mountain View, CA 94040
(650) 934-5200
(Name, address, and telephone number, including area code, of agent for service)

Copy to:
John Slebir, Esq.
General Counsel
VIVUS, Inc.
1172 Castro Street
Mountain View, CA 94040
(650) 934-5200

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Securities Exchange Act of 1934, as amended (check one):

Large accelerated filer ☒ x

Non-accelerated filer ☐ o

(Do not check if a smaller reporting company)

Accelerated Filer ☐ o

Smaller Reporting Company ☐ o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	600,000 shares(1)	\$ 8.08(2)	\$ 4,848,000.00	\$ 563.00

Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional securities of Common Stock of VIVUS, Inc. (the “Registrant”) that became issuable under the Registrant’s 1994 Employee Stock Purchase Plan (the “Plan”) set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number or outstanding shares of Common Stock.

(1) Represents shares of Common Stock which have become available for issuance under the Plan as a result of an amendment approved by the board of directors on April 29, 2011 and by the stockholders at the Registrant’s Annual Meeting held on June 17, 2011 increasing the number of shares authorized for issuance thereunder by an aggregate of 600,000 shares.

(2) Estimated in accordance with Rule 457(c) and Rule 457(h) of the Securities Act solely for the purpose of calculating the registration fee on the basis of \$8.08 per share, which represents the average of the high and low prices reported on the NASDAQ Global Market on July 27, 2011.

Explanatory Note

This Registration Statement registers additional shares of Common Stock of the Registrant to be issued pursuant to the Plan. Unless noted herein, the contents of the previous Registration Statements on Form S-8 filed by the Registrant with the Securities and Exchange Commission on (i) June 14, 1994 (File No. 033-80362), (ii) June 24, 1996 (File No. 033-75698), (iii) March 21, 2001 (File No. 333-57374) and (iv) July 14, 2003 (File No. 333-107006) (collectively, the “Previous Form S-8s”), including periodic reports that the Registrant filed after the Previous Form S-8s to maintain current information about the Registrant, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 8. Exhibits.

Exhibit Number	Description
5.1	Opinion of Hogan Lovells US LLP
10.1	1994 Employee Stock Purchase Plan, as amended (incorporated by reference to the current report on Form 8-K filed on July 29, 2011)
23.1	Consent of Odenberg, Ullakko, Muranishi & Co. LLP, Independent Registered Public Accounting Firm
23.2	Consent of Hogan Lovells US LLP (included in Exhibit 5.1)
24.1	Power of Attorney (see signature page hereto)

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Mountain View, State of California, on this 1st day of August, 2011.

VIVUS, INC.

By: /s/ Timothy E. Morris
Timothy E. Morris
Senior Vice President, Finance and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints, jointly and severally, Leland F. Wilson and Timothy E. Morris, and each one of them individually, as his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorney-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Leland F. Wilson</u> Leland F. Wilson	Chief Executive Officer and Director (Principal Executive Officer)	August 1, 2011
<u>/s/ Timothy E. Morris</u>	Senior Vice President, Finance and Chief Financial Officer	August 1, 2011

Timothy E. Morris	(Principal Financial Officer)	
<u>/s/ Lee B. Perry</u> Lee B. Perry	Vice President and Chief Accounting Officer (Principal Accounting Officer)	August 1, 2011
<u>/s/ Peter Y. Tam</u> Peter Y. Tam	President and Director	August 1, 2011
<u>/s/ Mark B. Logan</u> Mark B. Logan	Chairman of the Board	August 1, 2011
<u>/s/ Charles J. Casamento</u> Charles J. Casamento	Director	August 1, 2011
<u>/s/ Linda M. Dairiki Shortliffe, M.D.</u> Linda M. Dairiki Shortliffe, M. D.	Director	August 1, 2011

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INDEX TO EXHIBITS

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 3rd Floor
 Palo Alto, CA 94301
 T +1 650 463 4000
 F +1 650 463 4999
 www.hoganlovells.com

August 1, 2011

Board of Directors
 VIVUS, Inc.
 1172 Castro Street
 Mountain View, CA 94040

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We are acting as counsel to VIVUS, Inc., a Delaware corporation (the “**Company**”), in connection with its registration statement on Form S-8 (the “**Registration Statement**”), filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “**Act**”), relating to the proposed offering of up to 600,000 newly issued shares (the “**Shares**”) of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”), all of which Shares are issuable pursuant to the Company’s 1994 Employee Stock Purchase Plan, as amended (the “**Plan**”). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including telecopies). As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

This opinion letter is based as to matters of law solely on the Delaware General Corporation Law, as amended. We express no opinion herein as to any other laws, statutes, ordinances, rules, or regulations. As used herein, the term “Delaware General Corporation Law, as amended” includes the statutory provisions contained therein, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting these laws.

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. Hogan Lovells refers to the international legal practice comprising Hogan Lovells US LLP, Hogan Lovells International LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses with offices in: Abu Dhabi Alicante Amsterdam Baltimore Beijing Berlin Brussels Caracas Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston London Los Angeles Madrid Miami Milan Moscow Munich New York Northern Virginia Paris Philadelphia Prague Rome San Francisco Shanghai Silicon Valley Singapore Tokyo Ulaanbaatar Warsaw Washington DC Associated offices: Budapest Jeddah Riyadh Zagreb

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) effectiveness of the Registration Statement, (ii) issuance of the Shares pursuant to the terms of the Plan and (iii) receipt by the Company of the consideration for the Shares specified in the Plan and the applicable resolutions of the Board of Directors, the Shares will be validly issued, fully paid, and nonassessable.

This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligation to advise you of any changes in the foregoing subsequent to the effective date of the Registration Statement.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are an “expert” within the meaning of the Act.

Very truly yours,

/s/ Hogan Lovells US LLP

HOGAN LOVELLS US LLP

CONSENT OF ODENBERG, ULLAKKO, MURANISHI & CO. LLP
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 pertaining to the 1994 Employee Stock Purchase Plan, as amended, of our reports dated February 25, 2011, relating to the consolidated financial statements and the effectiveness of internal control over financial reporting of VIVUS, Inc. included in its Annual Report on Form 10-K for the year ended December 31, 2010.

/s/ Odenberg, Ullakko, Muranishi & Co. LLP

Odenberg, Ullakko, Muranishi & Co. LLP
San Francisco, California
August 1, 2011
