

FORM 5

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

☐ Form 3 Holdings Reported.

☐ Form 4 Transactions Reported.

ANNUAL STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

OMB Number: 3235-0362  
Estimated average burden hours per response: 1.0

1. Name and Address of Reporting Person* <u>NIDA TERRY</u>			2. Issuer Name and Ticker or Trading Symbol <u>VIVUS INC [ VVUS ]</u>		5. Relationship of Reporting Person(s) to Issuer (Check all applicable) <div>Director10% Owner</div> <div><input checked="" type="checkbox"/> Officer (give title below)Other (specify below) <u>VP, Worldwide Marketing/</u></div>	
(Last)	(First)	(Middle)	3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year) <u>12/31/2003</u>			
(Street)			4. If Amendment, Date of Original Filed (Month/Day/Year)		6. Individual or Joint/Group Filing (Check Applicable Line) <div><input checked="" type="checkbox"/> Form filed by One Reporting Person</div> <div>Form filed by More than One Reporting Person</div>	
(City)	(State)	(Zip)				

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at end of Issuer's Fiscal Year (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Beneficial Ownership (Instr. 4)
				Amount	(A) or (D)	Price			
Common Stock	10/31/2003		J	2,840	A	\$3.1705	48,330	D	

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
					(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Incentive Stock Option (right to buy)	\$2.6875						(1)	12/09/2008	Common Stock	52,500		52,500	D	
Incentive Stock Option (right to buy)	\$2.9375						(2)	12/01/2005	Common Stock	33,680		33,680	D	
Incentive Stock Option (right to buy)	\$2.9375						(2)	12/11/2006	Common Stock	5,970		5,970	D	
Incentive Stock Option (right to buy)	\$2.9375						(2)	12/08/2007	Common Stock	4,624		4,624	D	
Incentive Stock Option (right to buy)	\$4						(3)	01/20/2013	Common Stock	16,265		16,265	D	
Incentive Stock Option (right to buy)	\$4.8438						(3)	01/19/2010	Common Stock	28,788		28,788	D	
Incentive Stock Option (right to buy)	\$8.08						(3)	01/21/2012	Common Stock	16,606		16,606	D	
Non-Qualified Stock Option (right to buy)	\$2.9375						(2)	12/01/2005	Common Stock	13,195		13,195	D	

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned  
(e.g., puts, calls, warrants, options, convertible securities)**

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
					(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Non-Qualified Stock Option (right to buy)	\$2.9375						(2)	12/11/2006	Common Stock	24,030		24,030	D	
Non-Qualified Stock Option (right to buy)	\$2.9375						(2)	12/08/2007	Common Stock	21,626		21,626	D	
Non-Qualified Stock Option (right to buy)	\$4						(3)	01/20/2013	Common Stock	10,385		10,385	D	
Non-Qualified Stock Option (right to buy)	\$4.4063						(2)	11/29/2005	Common Stock	103,125		103,125	D	
Non-Qualified Stock Option (right to buy)	\$4.8438						(3)	01/19/2010	Common Stock	6,212		6,212	D	
Non-Qualified Stock Option (right to buy)	\$8.08						(3)	01/21/2012	Common Stock	9,644		9,644	D	

**Explanation of Responses:**

- Twenty-five percent (25%) of the total number of shares become exercisable on the anniversary of this grant, and one forty-eighth (1/48th) of the total number of shares become exercisable at the end of each full month thereafter.
- On October 19, 1998, VIVUS, Inc. repriced certain of its outstanding options to purchase its Common Stock. The reported transaction reports the grant of the repriced option (the "Repriced Option") upon cancellation of the original option (the "Original Option"). Twenty-five percent (25%) of the shares subject to the Original Option become exercisable on the first anniversary of the date of grant and one forty-eighth (1/48th) of such shares became exercisable each month thereafter. The Repriced Option is subject to the same vesting schedule as the Original Option; provided, however, the Repriced Option cannot be exercised in the first six months following the date of repricing.
- There is no exercisable date. This is an option grant.

By: /s/ Linda Derboghosian

For: Terry Nida

02/13/2004

\*\* Signature of Reporting Person

Date

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

\* If the form is filed by more than one reporting person, see Instruction 4 (b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure.

**Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB Number.**