

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:
-

First Manhattan Co.
399 Park Avenue
New York, NY 10022

July 17, 2013

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351 E. Evelyn Avenue
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To the Independent Directors of VIVUS, Inc.:

We are writing to request that you desist in your practice of making false accusations with respect to First Manhattan Co. ("FMC").

In your press release issued yesterday afternoon, you wrongly accused FMC of conducting a "campaign of misleading statements" by "robo-call," clearly implying that this alleged "robo-call" campaign was designed to mislead retail stockholders of VIVUS, Inc. ("Vivus") on a large scale. Furthermore, you alleged that corrective disclosure was required so that stockholders have accurate information on which to make their voting decision. These accusations are untrue.

You allege that MacKenzie Partners, Inc., our proxy solicitor, conducted a "robo-call" campaign. Dan Burch, the Chief Executive Officer of MacKenzie Partners, has represented to us that MacKenzie does not conduct proxy solicitations through the use of "robo-calls", and has not done so in this case. Moreover, Mr. Burch has represented that all calls have been made by individuals associated with MacKenzie. Your allegation is untrue.

Our press release announcing the ISS recommendation clearly and accurately reported its conclusions. The press reports covering this contest all did the same. The Vivus stockholders had fully accurate information well in advance of the scheduled July 15 Annual Meeting, and your claimed basis for delaying the meeting to give the stockholders sufficient time to make informed decisions is preposterous.

You allege that FMC purposefully failed to file required disclosures with the SEC. There has been no such failure, purposefully or inadvertently – this is again untrue. Nothing that is required to

have been filed with the SEC has not been filed. In addition, unlike you, we have told the SEC the truth about our conduct; and we are not required to make any corrective filings or disclosures on this matter.¹ Your allegation is untrue.

Your pattern of making false accusations against First Manhattan is unacceptable. You appear to be engaged in a greater campaign to distract the Vivus stockholders from your record of value destruction, to entrench yourselves, to disenfranchise the stockholders, and to delay the day of reckoning. This conduct must stop.

The stockholders have voted and it is your duty to honor the results of this election. We are confident that a new board will allow owners of Vivus to realize the value of their investment.

Very truly yours,

Dr. Sam Colin
Senior Managing Director
First Manhattan Co.

¹ As you know, the SEC has not passed upon the accuracy or completeness of any soliciting material nor upon the merits of or approved of any statement by the participants in this solicitation.
