
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)

February 22, 2005

VIVUS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation)

000-23490
(Commission File Number)

91-3136179
(IRS Employer
Identification No.)

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

650-934-5200
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 7.01. REGULATION FD DISCLOSURE

On February 22, 2005, VIVUS, Inc. (the "Company") issued a press release announcing its intention to offer seven million five hundred thousand shares of common stock in an underwritten public offering under the Company's previously filed shelf Registration Statement on Form S-3 (File No. 333-121519) which was declared effective by the Securities and Exchange Commission on January 7, 2005. A copy of the press release is attached to this report as Exhibit 99.1.

Pursuant to General Instruction B.2 of Form 8-K, the press release attached as Exhibit 99.1 is not "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, but is instead furnished for purposes of that instruction.

Item 8.01. OTHER EVENTS

On February 22, 2005, the Company filed a Rule 424(b)(5) preliminary prospectus supplement and accompanying preliminary prospectus with the Securities and Exchange Commission in connection with its shelf Registration Statement on Form S-3 (File No. 333-121519) (the "Registration Statement").

The Company is also filing as exhibit 5.1 to this Current Report on Form 8-K an opinion of counsel.

This Current Report is being filed for the purpose of incorporating the information from the prospectus supplement and opinion of counsel attached as exhibits hereto by reference into this report and into the Registration Statement that was declared effective by the Securities and Exchange Commission on January 7, 2005.

Item 9.01. FINANCIAL STATEMENTS AND EXHIBITS**(c) Exhibits.**

Exhibit No.	Description
5.1	Legal Opinion of Wilson Sonsini Goodrich & Rosati P.C.
99.1	Press release dated February 22, 2005 announcing the Company's underwritten common stock offering

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

VIVUS, INC.

By: /s/ Timothy E. Morris

Timothy E. Morris

Vice President and Chief Financial Officer

Date: **February 22, 2005**

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EXHIBIT INDEX

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[Letterhead of Wilson Sonsini Goodrich & Rosati PC]

February 22, 2005

Vivus, Inc.
1172 Castro Street
Mountain View, CA 94040

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

At your request, we have examined the Registration Statement on Form S-3 (File No. 333-121519) (the "Registration Statement"), filed by Vivus, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission in connection with the registration pursuant to the Securities Act of 1933, as amended (the "Act"), of up to an aggregate of \$50,000,000 of the Company's Common Stock, \$0.001 par value per share (the "Shares"). The Shares are to be sold in the manner set forth in the Registration Statement, the Prospectus contained therein (the "Prospectus") and the related supplement to the Prospectus (the "Prospectus Supplement").

We have examined the instruments, documents and records that we deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed (a) the authenticity of original documents and the genuineness of all signatures, (b) the conformity to the originals of all documents submitted to us as copies and (c) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents instruments and certificates we have reviewed.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued and sold in the manner described in the Registration Statement, the Prospectus and the Prospectus Supplement, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Prospectus, the Prospectus Supplement and in any amendment or supplement thereto. In giving such consent, we do not believe that we are "experts" within the meaning of such term as used in the Act or the rules and regulations of the Securities and Exchange Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Sincerely,
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Wilson Sonsini Goodrich & Rosati



For more information:
VIVUS, Inc.
Christina Weisgerber
650-934-5240

FOR IMMEDIATE RELEASE

VIVUS Announces Proposed Public Offering of Common Stock

Mountain View, Calif. (February 22, 2005) – VIVUS, Inc. (**Nasdaq:VVUS**) today announced that it has filed a prospectus supplement with the Securities and Exchange Commission relating to an underwritten public offering of 7,500,000 shares of common stock under an existing shelf registration statement and supplement thereto.

SG Cowen & Co., LLC is acting as sole book-running manager for the proposed offering. Wachovia Capital Markets, LLC is acting as co-lead manager for the proposed offering.

About VIVUS

VIVUS Inc. is a pioneer in the research and development of proprietary products to restore sexual function for men and women. VIVUS' current product pipeline includes four investigational products in late stage clinical development. For women, VIVUS has initiated its Phase 3 programs with ALISTA™ for female sexual arousal disorder, and Evamist™ for the alleviation of menopausal symptoms. Testosterone MDTs® for the treatment of HSDD has completed Phase 2 development. MDTs is a patented metered-dose transdermal spray drug delivery technology that is being developed to deliver drugs when applied to the skin. For men, VIVUS is developing avanafil for erectile dysfunction, which is currently in a Phase 2 program. VIVUS currently markets MUSE® (alprostadil) in the United States and internationally through distributors for the treatment of erectile dysfunction. For more information on clinical trials and products, please visit the Company's web site at www.vivus.com.

Certain statements in this press release are forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995. These statements may be identified by the use of forward-looking words such as "anticipate," "believe," "forecast," "estimated" and "intend," among others. These forward-looking statements are based on VIVUS' current expectations and actual results could differ materially. There are a number of factors that could cause actual events to differ materially from those indicated by such forward-looking statements. These factors include, but are not limited to, substantial competition; uncertainties of patent protection and litigation; reliance on sole source suppliers; limited sales and marketing efforts and dependence upon third parties; risks related to the development of innovative products; and risks related to failure to obtain FDA clearances or approvals and noncompliance with FDA regulations. As with any pharmaceutical under development, there are significant risks in the development, regulatory approval and commercialization of new products. There are no guarantees that future clinical studies discussed in this press release will be successful or that any product will receive regulatory approval for any indication or prove to be commercially successful. VIVUS does not undertake an obligation to update or revise any forward-looking statement. Investors should read the risk factors set forth in VIVUS' Form 10-K for the year ended December 31, 2003 and periodic reports filed with the Securities and Exchange Commission.
