

VIVUS INC
Form 4
June 30, 2009

FORM 4

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

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
MARSH GUY P

(Last) (First) (Middle)
1172 CASTRO STREET

(Street)

MOUNTAIN VIEW, CA 94040

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
VIVUS INC [VVUS]

3. Date of Earliest Transaction (Month/Day/Year)
06/26/2009

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

____ Director _____ 10% Owner
 Officer (give title below) _____ Other (specify below)
VP, Operations & General Mgr.

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

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 Following Reported Transaction(s) (Instr. 3 and 4) | 6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4) | 7. Nature of Ownership (Instr. 4) |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|-----------------------------------|
| | | | Code | V Amount (A) or (D) Price | | | |
| Common Stock | 06/26/2009 | | M | 3,832 A \$ 4.25 | 7,533 | D | |
| Common Stock | 06/26/2009 | | S ⁽¹⁾ | 3,832 D \$ 6 | 3,701 | D | |
| Common Stock | 06/26/2009 | | M | 7,514 A \$ 4.25 | 11,215 | D | |
| Common Stock | 06/26/2009 | | S ⁽¹⁾ | 7,514 D \$ 6 | 3,701 | D | |
| Common Stock | 06/26/2009 | | M | 521 A \$ 3.73 | 4,222 | D | |

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Common Stock 06/26/2009 S⁽¹⁾ 521 D \$ 6.02 3,701 D

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

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(9-02)

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 Underlying Securities (Instr. 3 and 4) | Amount or Number of Shares |
|--|--|--------------------------------------|--|--------------------------------|---|--|---|----------------------------|
| Incentive Stock Option (right to buy) | \$ 3.73 | 06/26/2009 | | M | 521 | ⁽²⁾ 08/23/2015 | Common Stock | 521 |
| Incentive Stock Option (right to buy) | \$ 4.25 | 06/26/2009 | | M | 7,514 | ⁽³⁾ 01/29/2017 | Common Stock | 7,514 |
| Non-Qualified Stock Option (right to buy) | \$ 4.25 | 06/26/2009 | | M | 3,832 | ⁽³⁾ 01/29/2017 | Common Stock | 3,832 |

Reporting Owners

| Reporting Owner Name / Address | Relationships | | | |
|--|---------------|-----------|-------------------------------|-------|
| | Director | 10% Owner | Officer | Other |
| MARSH GUY P 1172 CASTRO STREET MOUNTAIN VIEW, CA 94040 | | | VP, Operations & General Mgr. | |

Signatures

By: Kate Higgins For: Guy Marsh 06/30/2009

 **Signature of Reporting Person Date

Explanation of Responses:

- * 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).
- (1) The sales reported on this Form 4 were effected pursuant to a Rule 10b5-1 trading plan adopted by the reporting person on March 12, 2009.
- (2) Twenty-five percent (25%) of the shares subject to the option became exercisable on 8/23/06 and one forty-eighth of the shares become exercisable monthly thereafter.
- (3) Twenty-five percent (25%) of the shares subject to the option became exercisable on 1/29/08 and one forty-eighth of the shares become exercisable monthly thereafter.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.