VIVUS INC Form 4 August 03, 2009

FORM 4

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

OMB APPROVAL OMB

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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

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF

SECURITIES

1(b).

(Print or Type Responses)

See Instruction

1. Name and Address of Reporting Person * MARSH GUY P			2. Issuer Name and Ticker or Trading Symbol VIVUS INC [VVUS]	5. Relationship of Reporting Person(s) to Issuer (Check all applicable)		
(Last) (First) (Middle)		(Middle)	3. Date of Earliest Transaction			
			(Month/Day/Year)	Director 10% Owner		
1172 CASTRO) STREET		07/30/2009	X Officer (give title Other (specify below) below) VP, Operations & General Mgr.		
	(Street)		4. If Amendment, Date Original	6. Individual or Joint/Group Filing(Check		
			Filed(Month/Day/Year)	Applicable Line) _X_ Form filed by One Reporting Person		
MOUNTAIN VIEW, CA 94040				Form filed by More than One Reporting Person		

(City)	(State)	(Zip) Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned							
1.Title of	2. Transaction Date	2A. Deemed	3.	4. Securities Acquired (A)	5. Amount of	6.	7. Nature of		
Security	(Month/Day/Year)	Execution Date, if	Transactio	omr Disposed of (D)	Securities	Ownership	Indirect		
(Instr. 3)		any	Code	(Instr. 3, 4 and 5)	Beneficially	Form:	Beneficial		
		(Month/Day/Year)	(Instr. 8)		Owned	Direct (D)	Ownership		
					Following	or Indirect	(Instr. 4)		
				(4)	Reported	(I)			
				(A)	Transaction(s)	(Instr 4)			

		Code V	Amount	(A) or (D)	Price	Reported Transaction(s) (Instr. 3 and 4)	(I) (Instr. 4)
Common Stock	07/30/2009	M	17,200	A	\$ 4.8438	20,901	D
Common Stock	07/30/2009	S <u>(1)</u>	17,200	D	\$ 7.5567	3,701 (2)	D
Common Stock	07/30/2009	M	16,770	A	\$ 4.58	20,471	D
Common Stock	07/30/2009	S <u>(1)</u>	16,770	D	\$ 7.5567	3,701 (2)	D
Common Stock	07/30/2009	M	1,030	A	\$ 4.58	4,731	D

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Common Stock	07/30/2009	S <u>(1)</u>	1,030	D	\$ 7.5567	3,701 (2)	D
Common Stock	07/31/2009	M	547	A	\$ 3.13	4,248	D
Common Stock	07/31/2009	S <u>(1)</u>	547	D	\$ 7.37	3,701	D
Common Stock	07/31/2009	M	1,194	A	\$ 4.25	4,895	D
Common Stock	07/31/2009	S <u>(1)</u>	1,194	D	\$ 7.37	3,701	D
Common Stock	07/31/2009	M	890	A	\$ 4.25	4,591	D
Common Stock	07/31/2009	S(1)	890	D	\$ 7.37	3,701	D
Common Stock	07/31/2009	M	17,200	A	\$ 4.58	20,901	D
Common Stock	07/31/2009	S <u>(1)</u>	17,200	D	\$ 7.5	3,701	D

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

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SEC 1474 (9-02)

 $\label{thm:convertible} \textbf{Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned} \\ \textit{(e.g., puts, calls, warrants, options, convertible securities)}$

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. Transactic Code (Instr. 8)	5. Number of orDerivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exer Expiration D (Month/Day)	ate	7. Title and Lunderlying S (Instr. 3 and	Securit
				Code V	(A) (D)	Date Exercisable	Expiration Date	Title	Amo or Num of Sh
Incentive Stock Option (right to buy)	\$ 3.13	07/31/2009		M	547	(3)	01/30/2016	Common Stock	54
Incentive Stock Option (right to buy)	\$ 4.25	07/31/2009		M	1,194	<u>(4)</u>	01/29/2017	Common Stock	1,1

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Incentive Stock Option (right to buy)	\$ 4.58	07/30/2009	M	1,030	<u>(5)</u>	01/26/2014	Common Stock	1,0
Incentive Stock Option (right to buy)	\$ 4.58	07/31/2009	M	17,200	(5)	01/26/2014	Common Stock	17,2
Incentive Stock Option (right to buy)	\$ 4.8438	07/30/2009	M	17,200	(5)	01/19/2010	Common Stock	17,2
Non-Qualified Stock Option (right to buy)	\$ 4.25	07/31/2009	M	890	<u>(4)</u>	01/29/2017	Common Stock	89
Non-Qualified Stock Option (right to buy)	\$ 4.58	07/30/2009	M	16,770	<u>(5)</u>	01/26/2014	Common Stock	16,7

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
08/03/2009

**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.
- The sale price reported in column 4 of Table 1 represents the weighted average sales price of the shares sold ranging from \$7.50 to \$7.64 (2) per share. Upon request by the Commission staff, the Issuer, or a security holder of the Issuer, the Reporting Person will provide full information regarding the number of shares sold at each separate price.
- (3) Twenty-five percent (25%) of the shares subject to the option became exercisable on 1/30/07 and one forty-eighth of the shares become exercisable monthly thereafter.
- (4) 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.
- (5) The option is 100% vested.

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