

VIVUS INC  
Form DFAN14A  
May 24, 2013

SCHEDULE 14A

Consent 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 Consent 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:

On May 23, 2013, First Manhattan Co. and its affiliates (collectively, "First Manhattan") issued a press release announcing that they have increased their slate of director nominees for election to the board of VIVUS, Inc. ("Vivus") at Vivus's 2013 annual meeting of stockholders (the "Annual Meeting") to nine, to include Alexander J. Denner, Ph.D., and First Manhattan's two previously announced alternate director nominees, Dr. Rolf Bass and Melvin Keating. A copy of the press release is attached as Exhibit 1.

Also on May 23, 2013, First Manhattan posted additional references to [www.ourmaterials.com/VVUS/](http://www.ourmaterials.com/VVUS/). Copies of the references are attached as Exhibit 2.

Updated information regarding the Participants in a solicitation of proxies of the stockholders of Vivus in connection with the Annual Meeting is filed herewith as Exhibit 3.