

VIVUS INC  
Form DFAN14A  
July 05, 2013

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:

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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 July 5, 2013, First Manhattan Co. and its affiliates ("First Manhattan") issued a press release announcing that two proxy advisory firms, Institutional Shareholder Services Inc. ("ISS") and Egan Jones Proxy Services ("Egan Jones") have recommended that stockholders of VIVUS, Inc. ("Vivus") vote for the election of First Manhattan's director nominees to Vivus' board of directors at Vivus' annual meeting. The press release also stated that Egan Jones recommends that Vivus stockholders vote for all nine of First Manhattan's nominees and that ISS recommends that Vivus stockholders vote for three of First Manhattan's nominees, each on the WHITE proxy card. A copy of the press release is filed herewith as Exhibit 1.

Also on July 5, 2013, First Manhattan posted an additional reference to [www.ourmaterials.com/VVUS/](http://www.ourmaterials.com/VVUS/). A copy of the additional reference is filed herewith as Exhibit 2.