

VIVUS INC
Form DFAN14A
July 15, 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:

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On July 15, 2013, First Manhattan Co. and its affiliates (“First Manhattan”) issued by press release a statement in response to the adjournment by VIVUS, Inc. (“Vivus”) of its 2013 annual meeting of stockholders (the “Annual Meeting”). In its statement, First Manhattan expressed its belief that the decision to adjourn the Annual Meeting is a delaying tactic by the current board of directors of Vivus (the “Board”) aimed to preserve the Board’s entrenched position and disenfranchise Vivus stockholders. In addition, First Manhattan, in response to accusations by Vivus that First Manhattan has violated federal securities laws, asserted that it is aware of its disclosure obligations under federal securities laws and has filed all materials required to be filed with the U.S. Securities and Exchange Commission. A copy of the press release containing the statement is filed herewith as Exhibit 1.

Also on July 15, 2013, First Manhattan issued a second statement by press release expressing First Manhattan’s objection to Vivus’ adjournment of the Annual Meeting and stating that such adjournment is an attack on Vivus stockholders’ right to vote at the Annual Meeting. The statement also expressed First Manhattan’s belief that Vivus’ stated reasons for adjourning the Annual Meeting are a pretext and that Vivus lacked the authority to adjourn the Annual Meeting without a stockholder vote approving such adjournment. A copy of the press release containing the statement is filed herewith as Exhibit 2.

Also on July 15, 2013, First Manhattan posted additional references to www.ourmaterials.com/VVUS/. Copies of the additional references are filed herewith as Exhibit 3.