

VIVUS INC
Form 3
June 03, 2013

FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL

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INITIAL STATEMENT OF 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)

<p>1. Name and Address of Reporting Person *</p> <p>Â FIRST MANHATTAN CO</p> <p>(Last) (First) (Middle)</p> <p>399 PARK AVENUE,Â</p> <p>(Street)</p> <p>NEW YORK,Â NYÂ 10022</p> <p>(City) (State) (Zip)</p>	<p>2. Date of Event Requiring Statement</p> <p>(Month/Day/Year)</p> <p>05/23/2013</p>	<p>3. Issuer Name and Ticker or Trading Symbol</p> <p>VIVUS INC [VIVUS]</p>	<p>4. Relationship of Reporting Person(s) to Issuer</p> <p>(Check all applicable)</p> <p><input type="checkbox"/> Director <input checked="" type="checkbox"/> 10% Owner</p> <p><input type="checkbox"/> Officer <input checked="" type="checkbox"/> Other</p> <p>(give title below) (specify below)</p> <p>SEE REMARKS</p>	<p>5. If Amendment, Date Original Filed(Month/Day/Year)</p>	<p>6. Individual or Joint/Group Filing(Check Applicable Line)</p> <p><input type="checkbox"/> Form filed by One Reporting Person</p> <p><input checked="" type="checkbox"/> Form filed by More than One Reporting Person</p>
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Table I - Non-Derivative Securities Beneficially Owned

1. Title of Security (Instr. 4)	2. Amount of Securities Beneficially Owned (Instr. 4)	3. Ownership Form: Direct (D) or Indirect (I) (Instr. 5)	4. Nature of Indirect Beneficial Ownership (Instr. 5)
Common Stock, \$0.001 par value ("Common Stock")	4,393,316	I	See footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(9)</u>
Common Stock	5,000	D <u>(4)</u> <u>(9)</u>	Â
Common Stock	2,000	D <u>(5)</u> <u>(9)</u>	Â
Common Stock	1,500	D <u>(6)</u> <u>(9)</u>	Â
Common Stock	100	D <u>(7)</u> <u>(9)</u>	Â
Common Stock	900	D <u>(8)</u> <u>(9)</u>	Â

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

SEC 1473 (7-02)

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Table II - Derivative Securities Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 4)	2. Date Exercisable and Expiration Date (Month/Day/Year)		3. Title and Amount of Securities Underlying Derivative Security (Instr. 4)		4. Conversion or Exercise Price of Derivative Security	5. Ownership Form of Derivative Security: Direct (D) or Indirect (I) (Instr. 5)	6. Nature of Indirect Beneficial Ownership (Instr. 5)
	Date Exercisable	Expiration Date	Title	Amount or Number of Shares			

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
FIRST MANHATTAN CO 399 PARK AVENUE NEW YORK, NY 10022	^	^ X	^	SEE REMARKS
First BioMed Management Associates LLC 399 PARK AVENUE NEW YORK, NY 10022	^	^ X	^	SEE REMARKS
ROSENMAN HERM 8420 SANTALUZ VILLAGE GREEN E. #100 SAN DIEGO, CA 92121	^	^ X	^	SEE REMARKS
BIRO JON C 5858 WESTHEIMER SUITE 200 HOUSTON, TX 77057	^	^ X	^	SEE REMARKS
Norton David Y 8 GREENHOLM STREET, APT C PRINCETON, NJ 08540	^	^ X	^	SEE REMARKS
KEATING MELVIN L 18 DRIFTWOOD DRIVE LIVINGSTON, NJ 07039	^	^ X	^	SEE REMARKS

Signatures

s/ Neal K. Stearns, Managing Member of First Manhattan LLC, General Partner of First Manhattan Co.	06/03/2013
__Signature of Reporting Person	Date
/s/ Neal K. Stearns, Managing Member of First Manhattan LLC, General Partner of First Manhattan Co., Co-Managing Member of First BioMed Management Associates, LLC	06/03/2013
__Signature of Reporting Person	Date
/s/ Herman Rosenman	06/03/2013
__Signature of Reporting Person	Date

/s/ Jon C. Biro		06/03/2013
	__Signature of Reporting Person	Date
/s/ David York Norton		06/03/2013
	__Signature of Reporting Person	Date
/s/ Rolf Bass		06/03/2013
	__Signature of Reporting Person	Date
/s/ Melvin L. Keating		06/03/2013
	__Signature of Reporting Person	Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 5(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 shares of Common Stock reported on this line may be deemed to be indirectly beneficially owned by First Manhattan Co., a New York limited partnership ("FMC"), certain of its partners and/or First BioMed Management Associates, LLC ("FBMA"), a Delaware limited liability company, as described herein and in footnote 2 below. The sole general partner of FMC is First Manhattan LLC ("FM LLC"), a New York limited liability company. The sole managing members of FBMA are FMC and Samuel F. Colin ("Dr. Colin").
- (2) The securities reported on this line include (i) a number of shares of Common Stock which represents a proportion of the aggregate number of shares of Common Stock directly held by First Health, L.P., First Health Limited and First Health Associates, L.P. (collectively, the "First Health Funds"), pooled investment vehicles to which FMC acts as the investment advisor, which proportion is attributable to the limited partnership interests of certain partners of FMC that are also limited partners of the First Health Funds; (ii) shares of Common Stock directly held by First BioMed, L.P. and First BioMed Portfolio, L.P., pooled investment vehicles to which FMBA acts as the investment advisor; and (iii) shares of Common Stock held in the accounts of partners, and the immediate family of partners, including shares of Common Stock held in Dr. Colin's personal account and shares of Common Stock held by trusts established for the benefit of Dr. Colin's family members.
- (3) (continued from footnote (2)) The shares of Common Stock reported on this line include only those shares in which FMC, certain of its partners and/or FMBA, as applicable, may be deemed to have a pecuniary interest (as such term is defined under Rule 16a-1(a)(2) of the Securities Exchange Act of 1934, as amended (the "1934 Act")) and accordingly does include additional shares which FMC and/or FMBA, as applicable, may be deemed to beneficially own for purposes of Section 13(d) of the 1934 Act as reported in the Schedule 13D filed by the reporting persons (the "Schedule 13D").
- (4) The shares of Common Stock reported on this line are held directly by Herman Rosenman.
- (5) The shares of Common Stock reported on this line are held directly by Jon C. Biro.
- (6) The shares of Common Stock reported on this line are held directly by David York Norton.
- (7) The shares of Common Stock reported on this line are held directly by Rolf Bass.
- (8) The shares of Common Stock reported on this line are held directly by Melvin L. Keating.
- (9) For purposes of Rule 16a-1(a)(2) of the 1934 Act, each of the reporting persons disclaims beneficial ownership of the shares reported herein to the extent such beneficial ownership exceeds its pecuniary interest therein.

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Remarks:

As described in Item 4 of Amendment No. 5 to the Schedule 13D, the reporting persons and Al

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.