

VIVUS INC  
Form 8-K/A  
July 14, 2005

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

---

**FORM 8-K/A**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)

**June 28, 2005**

---

**VIVUS, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**

(State or other jurisdiction  
of incorporation)

**000-23490**

(Commission File Number)

**94-3136179**

(IRS Employer  
Identification No.)

**1172 CASTRO STREET  
MOUNTAIN VIEW, CA 94040**

(Address of principal executive offices, including zip code)

**650-934-5200**

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

## Edgar Filing: VIVUS INC - Form 8-K/A

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

VIVUS, Inc. is hereby amending its previously filed Form 8-K dated June 28, 2005 to include a previously omitted reference to KPMG LLP's reports on management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2004.

**Item 4.01. Change in Registrant's Certifying Accountants**

(a) Dismissal of KPMG LLP

On June 28, 2005, the Audit Committee of the Board of Directors of VIVUS, Inc. (the "Company") dismissed KPMG LLP ("KPMG"), the independent registered public accounting firm previously engaged to audit the Company's financial statements, effective immediately.

KPMG's reports on the Company's financial statements for the fiscal years ended December 31, 2003 and 2004 did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles. The audit reports of KPMG LLP on management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2004 did not contain an adverse opinion or disclaimer of opinion, and were not qualified or modified as to uncertainty, audit scope or accounting principles.

In connection with the audits of the Company's financial statements for the two fiscal years ended December 31, 2003 and 2004, and in the interim period through June 28, 2005, there were no disagreements with KPMG on any matter of accounting principles or practices, financial statements disclosure, or auditing scope or procedure, which disagreements, if not resolved to KPMG's satisfaction, would have caused KPMG to make reference thereto in its reports on the financial statements for such years. During the period described in the preceding sentence, there were no reportable events (as defined in the Securities and Exchange Commission Regulation S-K, Item 304 (a)(1)(v)).

The Company provided KPMG with a copy of this Form 8-K/A prior to its filing with the Securities and Exchange Commission and requested KPMG to furnish a letter addressed to the Securities and Exchange Commission stating whether it agrees with the above statements. Attached as Exhibit 16.1 is a copy of the KPMG letter to the Securities and Exchange Commission.

(b) Engagement of Odenberg, Ullakko, Muranishi & Co. LLP

On June 29, 2005, the Audit Committee of the Board of Directors of the Company engaged Odenberg, Ullakko, Muranishi & Co. LLP ("OUM") as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2005. During the Company's two most recent fiscal years ended December 31, 2003 and December 31, 2004 and through the date of this Form 8-K/A, neither the Company nor anyone acting on its behalf consulted with OUM regarding either: (i) the application of accounting principles to a specific transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's financial statements; or (ii) any matter that was the subject of a disagreement or event identified in response to paragraph 304(a)(1)(iv) of Regulation S-K and the related instructions to that Item.

## Edgar Filing: VIVUS INC - Form 8-K/A

The Company has requested that OUM review this Form 8-K/A and provided OUM the opportunity to furnish a letter addressed to the Securities and Exchange Commission containing any new information, clarification of the Company's expression of its views, or the respects in which it does not agree with the statements made by the Company. OUM has advised the Company that it has reviewed this Form 8-K/A and has no basis on which to submit a letter addressed to the Securities and Exchange Commission in response to Item 304 of Regulation S-K.

### **Item 9.01. Financial Statements and Exhibits.**

(c) Exhibits

16.1 Letter from KPMG LLP to the Securities and Exchange Commission dated July 12, 2005.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

VIVUS, INC.

By:

/s/ Timothy E. Morris  
**Timothy E. Morris**  
**Vice President and Chief Financial Officer**

Date: **July 12, 2005**

**INDEX TO EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>
16.1	Letter from KPMG LLP to the Securities and Exchange Commission dated July 12, 2005.