

VIVUS INC

Form 4

August 13, 2008

**FORM 4**
**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

Check this box  
if no longer  
subject to  
Section 16.  
Form 4 or  
Form 5  
obligations  
may continue.  
See Instruction  
1(b).

**STATEMENT OF CHANGES IN 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

## OMB APPROVAL

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(Print or Type Responses)

1. Name and Address of Reporting Person \*  
**MARSH GUY P**

(Last) (First) (Middle)

**1172 CASTRO STREET**

(Street)

**MOUNTAIN VIEW, CA 94040**

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading  
Symbol

**VIVUS INC [VVUS]**

3. Date of Earliest Transaction  
(Month/Day/Year)

**08/11/2008**

4. If Amendment, Date Original  
Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to  
Issuer

(Check all applicable)

\_\_\_\_ Director \_\_\_\_ 10% Owner  
\_\_\_\_X\_\_\_\_ Officer (give title below) \_\_\_\_ Other (specify below)

VP, Operations & General Mgr.

6. Individual or Joint/Group Filing(Check  
Applicable Line)  
\_\_\_\_X\_\_\_\_ Form filed by One Reporting Person  
\_\_\_\_ Form filed by More than One Reporting  
Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price		
Common Stock	08/11/2008		M		30,000	A	\$ 4.5	33,701	D
Common Stock	08/11/2008		S <sup>(1)</sup>		30,000	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008		M		1,640	A	\$ 3.13	5,341	D
Common Stock	08/11/2008		S <sup>(1)</sup>		1,640	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008		M		12,577	A	\$ 3.13	16,278	D

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Common Stock	08/11/2008	<u>S(1)</u>	12,577	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008	M	9,210	A	\$ 3.73	12,911	D
Common Stock	08/11/2008	<u>S(1)</u>	9,210	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008	M	7,456	A	\$ 3.73	11,157	D
Common Stock	08/11/2008	<u>S(1)</u>	7,456	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008	M	29,856	A	\$ 3.875	33,557	D
Common Stock	08/11/2008	<u>S(1)</u>	29,856	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008	M	5,144	A	\$ 3.875	8,845	D
Common Stock	08/11/2008	<u>S(1)</u>	5,144	D	\$ 8.4213	3,701	D
Common Stock	08/11/2008	M	17,255	A	\$ 4	20,956	D
Common Stock	08/11/2008	<u>S(1)</u>	17,255	D	\$ 8.4213	3,701	D
Common Stock	08/12/2008	M	16,097	A	\$ 4	19,798	D
Common Stock	08/12/2008	<u>S(1)</u>	16,097	D	\$ 8.5639	3,701	D
Common Stock	08/12/2008	M	1,648	A	\$ 4	5,349	D
Common Stock	08/12/2008	<u>S(1)</u>	1,648	D	\$ 8.5639	3,701	D
Common Stock	08/12/2008	M	16,252	A	\$ 4.15	19,953	D
Common Stock	08/12/2008	<u>S(1)</u>	16,252	D	\$ 8.5639	3,701	D
Common Stock	08/12/2008	M	12,184	A	\$ 4.15	15,885	D
Common Stock	08/12/2008	<u>S(1)</u>	12,184	D	\$ 8.5639	3,701	D
Common Stock	08/12/2008	M	26,486	A	\$ 4.25	30,187	D
	08/12/2008	<u>S(1)</u>	26,486	D		3,701	D

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Common Stock					\$ 8.5639		
Common Stock	08/12/2008	M	2,333	A	\$ 4.25	6,034	D
Common Stock	08/12/2008	S <sup>(1)</sup>	2,333	D	\$ 8.5639	3,701	D

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

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(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Underlying Security (Instr. 3 and 4)
				Code	V (A) (D)	Date Exercisable Expiration Date	Title
Incentive Stock Option (right to buy)	\$ 3.13	08/11/2008		M	1,640	01/30/2007 <sup>(2)</sup> 01/30/2016	Common Stock
Incentive Stock Option (right to buy)	\$ 3.73	08/11/2008		M	9,210	08/23/2006 <sup>(3)</sup> 08/23/2015	Common Stock
Incentive Stock Option (right to buy)	\$ 3.875	08/11/2008		M	29,856	01/22/2002 <sup>(4)</sup> 01/22/2011	Common Stock
Incentive Stock Option (right to buy)	\$ 4	08/12/2008		M	16,097	01/20/2004 <sup>(4)</sup> 01/20/2013	Common Stock
Incentive Stock Option (right to buy)	\$ 4.15	08/12/2008		M	16,252	01/24/2006 <sup>(5)</sup> 01/24/2015	Common Stock
Incentive Stock Option (right to buy)	\$ 4.25	08/12/2008		M	2,333	01/29/2008 <sup>(6)</sup> 01/29/2017	Common Stock
	\$ 4.5	08/11/2008		M	30,000	04/20/2000 <sup>(4)</sup> 04/20/2009	

Incentive Stock Option (right to buy)								Common Stock
Non-Qualified Stock Option (right to buy)	\$ 3.13	08/11/2008	M	12,577	01/30/2007 <sup>(4)</sup>	01/30/2016		Common Stock
Non-Qualified Stock Option (right to buy)	\$ 3.73	08/11/2008	M	7,456	08/23/2006 <sup>(4)</sup>	08/23/2015		Common Stock
Non-Qualified Stock Option (right to buy)	\$ 3.875	08/11/2008	M	5,144	01/22/2002 <sup>(4)</sup>	01/22/2011		Common Stock
Non-Qualified Stock Option (right to buy)	\$ 4	08/11/2008	M	17,255	01/20/2004 <sup>(4)</sup>	01/20/2013		Common Stock
Non-Qualified Stock Option (right to buy)	\$ 4	08/12/2008	M	1,648	01/20/2004 <sup>(4)</sup>	01/20/2013		Common Stock
Non-Qualified Stock Option (right to buy)	\$ 4.15	08/12/2008	M	12,184	01/24/2006 <sup>(4)</sup>	01/24/2015		Common Stock
Non-Qualified Stock Option (right to buy)	\$ 4.25	08/12/2008	M	26,486	01/29/2008 <sup>(6)</sup>	01/29/2017		Common Stock

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
MARSH GUY P 1172 CASTRO STREET MOUNTAIN VIEW, CA 94040			VP, Operations & General Mgr.	

## Signatures

By: Kate Higgins For: Guy  
Marsh 08/13/2008

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 4(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 sales reported on this Form 4 were effected pursuant to a Rule 10b5-1 trading plan adopted by the reporting person on May 13, 2008.
- (2) Twenty-five percent (25%) of the shares subject to the option became exercisable on 1/30/07 and one forty-eighth of the shares became exercisable monthly thereafter.

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- (3) Twenty-five percent (25%) of the shares subject to the option became exercisable on 8/23/06 and one forty-eighth of the shares became exercisable monthly thereafter.
- (4) The option is 100% vested.
- (5) Twenty-five percent (25%) of the shares subject to the option became exercisable on 1/24/06 and one forty-eighth of the shares became exercisable monthly thereafter.
- (6) Twenty-five percent (25%) of the shares subject to the option became exercisable on 1/29/08 and one forty-eighth of the shares became exercisable monthly thereafter.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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