

VIVUS INC

Form 4

September 11, 2009

**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)

09/09/2009

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 &amp; 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	09/09/2009		M		35,000	A	\$ 6.05	38,701	D
Common Stock	09/09/2009		S <sup>(1)</sup>		35,000	D	\$ 10.95	3,701	D
Common Stock	09/10/2009		M		418	A	\$ 8.08	4,119	D
Common Stock	09/10/2009		S <sup>(1)</sup>		418	D	\$ 11.9763	3,701	D
Common Stock	09/10/2009		M		3,833	A	\$ 6.6875	7,534	D

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Common Stock	09/10/2009	S <sup>(1)</sup>	3,833	D	\$ 11.9763	3,701	D
Common Stock	09/10/2009	M	26,167	A	\$ 6.6875	29,868	D
Common Stock	09/10/2009	S <sup>(1)</sup>	26,167	D	\$ 11.9763	3,701	D
Common Stock	09/10/2009	M	4,582	A	\$ 6.05	8,283	D
Common Stock	09/10/2009	S <sup>(1)</sup>	4,582	D	\$ 11.9763	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 Amount of Underlying Security (Instr. 3 and 4)			
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares
Incentive Stock Option (right to buy)	\$ 6.688	09/10/2009		M		3,833		<u>(2)</u>	07/17/2010	Common Stock	3,833
Incentive Stock Option (right to buy)	\$ 8.08	09/10/2009		M		418		<u>(2)</u>	01/21/2012	Common Stock	418
Non-Qualified Stock Option (right to buy)	\$ 6.05	09/09/2009		M		35,000		<u>(3)</u>	01/25/2018	Common Stock	35,000
Non-Qualified Stock Option (right to buy)	\$ 6.05	09/10/2009		M		4,582		<u>(3)</u>	01/25/2018	Common Stock	4,582
Non-Qualified Stock Option (right to buy)	\$ 6.688	09/10/2009		M		26,167		<u>(2)</u>	07/17/2010	Common Stock	26,167

## 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                      09/11/2009

\_\_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 March 12, 2009.
- (2) The option is 100% vested.
- (3) Twenty-five percent (25%) of the total number of shares become exercisable on 1/25/09 and one forty-eighth (1/48th) of the total number of shares become exercisable at the end of each full month 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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