

Edgar Filing: VIVUS INC - Form SC 13G

VIVUS INC
Form SC 13G
July 30, 2007

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

SCHEDULE 13G

Under the Securities Exchange Act of 1934
(Amendment No.)*

VIVUS, INC.
(Name of Issuer)

COMMON STOCK, PAR VALUE \$0.001 PER SHARE
(Title of Class of Securities)

928551100
(CUSIP Number)

JULY 19, 2007
(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

☐ Rule 13d-1(b)
☒ Rule 13d-1(c)
☐ Rule 13d-1(d)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the reminder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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1. Name of Reporting Person: Aisling Capital II, LP
I.R.S. Identification
No. of Above Person

2. Check the Appropriate Box (a) ☐
if a Member of a Group (b) ☒

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3. SEC Use Only

4. Citizenship or Place of Organization Delaware

Number of Shares	5. Sole Voting Power:	2,926,029
Beneficially	6. Shared Voting Power:	0
Owned By	7. Sole Dispositive Power:	2,926,029
Each	8. Shared Dispositive Power:	0
Reporting Person		

9. Aggregate Amount Beneficially Owned by Each Reporting Person

2,926,029

10. Check Box if the Aggregate Amount in Row (9) Excludes Certain Shares

☐

11. Percent of Class Represented by Amount in Row (9) 5.0%

12. Type of Reporting Person PN

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1. Name of Reporting Person: Aisling Capital Partners, LP
I.R.S. Identification
No. of Above Person

2. Check the Appropriate Box (a) ☐
if a Member of a Group (b) ☒

3. SEC Use Only

4. Citizenship or Place of Organization Delaware

Number of Shares	5. Sole Voting Power:	2,926,029
Beneficially	6. Shared Voting Power:	0
Owned By	7. Sole Dispositive Power:	2,926,029
Each	8. Shared Dispositive Power:	0
Reporting Person		

9. Aggregate Amount Beneficially Owned by Each Reporting Person

2,926,029

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10. Check Box if the Aggregate Amount in Row (9) Excludes Certain Shares

☐

11. Percent of Class Represented by Amount in Row (9) 5.0%

12. Type of Reporting Person PN

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1. Name of Reporting Person: Aisling Capital Partners LLC
I.R.S. Identification
No. of Above Person

2. Check the Appropriate Box (a) ☐
if a Member of a Group (b) ☒

3. SEC Use Only

4. Citizenship or Place of Organization Delaware

Number of Shares	5. Sole Voting Power:	2,926,029
Beneficially	6. Shared Voting Power:	0
Owned By	7. Sole Dispositive Power:	2,926,029
Each	8. Shared Dispositive Power:	0
Reporting Person		

9. Aggregate Amount Beneficially Owned by Each Reporting Person
2,926,029

10. Check Box if the Aggregate Amount in Row (9) Excludes Certain Shares

☐

11. Percent of Class Represented by Amount in Row (9) 5.0%

12. Type of Reporting Person OO

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1. Name of Reporting Person: Steve Elms
I.R.S. Identification
No. of Above Person

2. Check the Appropriate Box (a) ☐
if a Member of a Group (b) ☒

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3. SEC Use Only

4. Citizenship or Place of Organization United States

Number of Shares	5. Sole Voting Power:	0
Beneficially	6. Shared Voting Power:	2,926,029
Owned By	7. Sole Dispositive Power:	0
Each	8. Shared Dispositive Power:	2,926,029
Reporting Person		

9. Aggregate Amount Beneficially Owned by Each Reporting Person

2,926,029

10. Check Box if the Aggregate Amount in Row (9) Excludes Certain Shares

☐

11. Percent of Class Represented by Amount in Row (9) 5.0%

12. Type of Reporting Person IN

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1. Name of Reporting Person: Dennis Purcell
I.R.S. Identification
No. of Above Person

2. Check the Appropriate Box (a) ☐
if a Member of a Group (b) ☒

3. SEC Use Only

4. Citizenship or Place of Organization United States

Number of Shares	5. Sole Voting Power:	0
Beneficially	6. Shared Voting Power:	2,926,029
Owned By	7. Sole Dispositive Power:	0
Each	8. Shared Dispositive Power:	2,926,029
Reporting Person		

9. Aggregate Amount Beneficially Owned by Each Reporting Person

2,926,029

10. Check Box if the Aggregate Amount in Row (9) Excludes Certain Shares

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[]

11. Percent of Class Represented by Amount in Row (9) 5.0%

12. Type of Reporting Person IN

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1. Name of Reporting Person: Andrew Schiff
I.R.S. Identification
No. of Above Person

2. Check the Appropriate Box (a) []
if a Member of a Group (b) [X]

3. SEC Use Only

4. Citizenship or Place of Organization United States

Number of Shares	5. Sole Voting Power:	0
Beneficially	6. Shared Voting Power:	2,926,029
Owned By	7. Sole Dispositive Power:	0
Each	8. Shared Dispositive Power:	2,926,029
Reporting Person		

9. Aggregate Amount Beneficially Owned by Each Reporting Person
2,926,029

10. Check Box if the Aggregate Amount in Row (9) Excludes Certain Shares

[]

11. Percent of Class Represented by Amount in Row (9) 5.0%

12. Type of Reporting Person IN

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Item 1. (a) NAME OF ISSUER

Vivus, Inc. (the "Company").

(b) ADDRESS OF ISSUER'S PRINCIPAL EXECUTIVE OFFICES

1172 Castro Street
Mountain View, CA 94040

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Item 2. (a) NAMES OF PERSONS FILING

This Statement is being filed on behalf of each of the following persons (collectively, the "Reporting Persons")

- (i) Aisling Capital II, LP, a Delaware limited partnership ("Aisling");
- (ii) Aisling Capital Partners, LP, a Delaware limited partnership ("Aisling Partners" and general partner of Aisling);
- (iii) Aisling Capital Partners LLC, a Delaware limited liability company ("Aisling Partners GP" and general partner of Aisling Partners);
- (iv) Mr. Steve Elms ("Mr. Elms" and a managing member of Aisling Partners GP);
- (v) Mr. Dennis Purcell ("Mr. Purcell" and a managing member of Aisling Partners GP); and
- (vi) Mr. Andrew Schiff ("Mr. Schiff" and a managing member of Aisling Partners GP).

(b) ADDRESS OF PRINCIPAL BUSINESS OFFICE

The address of the principal business offices of each of the Reporting Persons is 888 Seventh Avenue, 30th Floor, New York, NY 10106.

(c) CITIZENSHIP

- (i) Aisling - a Delaware limited partnership
- (ii) Aisling Partners - a Delaware limited partnership
- (iii) Aisling Partners GP - a Delaware limited liability company
- (iv) Mr. Elms - United States
- (v) Mr. Purcell - United States
- (vi) Mr. Schiff - United States

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(d) TITLE OF CLASS OF SECURITIES

Common Stock, par value \$0.001 per share (the "Common Stock" or "Shares")

(e) CUSIP NUMBER

928551100

Item 3. This statement is not being filed pursuant to either Rule 13d-1(b) or

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13d-2(b) or (c).

Item 4. OWNERSHIP.

(a) AMOUNT BENEFICIALLY OWNED:

Each of the Reporting Persons may be deemed to beneficially own an aggregate of 2,926,029 Shares.

(b) PERCENTAGE OWNED:

Based on calculations made in accordance with Rule 13d-3(d), and there being 58,359,629 Shares outstanding as of April 25, 2007 each of the Reporting Persons may be deemed to beneficially own approximately 5.0% of the outstanding Common Stock.

(c) NUMBER OF SHARES AS TO WHICH SUCH PERSON HAS:

(i) Each of Aisling, Aisling Partners and Aisling Partners GP may be deemed to have sole power to direct the voting and disposition of the 2,926,029 Shares beneficially owned by Aisling.

(ii) By virtue of the relationships between and among the Reporting Persons as described in Item 2, each of Mr. Elms, Mr. Purcell, and Mr. Schiff, may be deemed to share the power to direct the voting and disposition of the 2,926,029 Shares beneficially owned by Aisling.

Item 5. OWNERSHIP OF FIVE PERCENT OR LESS OF A CLASS

Not applicable.

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Item 6. OWNERSHIP OF MORE THAN FIVE PERCENT ON BEHALF OF ANOTHER PERSON

The partners of Aisling have the right to participate in the receipt of dividends from, or proceeds from the sale of, the Shares held for the account of Aisling in accordance with their ownership interests in Aisling.

Item 7. IDENTIFICATION AND CLASSIFICATION OF SUBSIDIARY WHICH ACQUIRED THE SECURITY BEING REPORTED ON BY THE PARENT HOLDING COMPANY

Not applicable.

Item 8. IDENTIFICATION AND CLASSIFICATION OF MEMBERS OF THE GROUP

Not applicable.

Item 9. NOTICE OF DISSOLUTION OF GROUP

Not applicable.

Item 10. CERTIFICATION

(b) The following certification shall be included if the statement is

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filed pursuant to ss.240.13d-1(c):

By signing below we certify that, to the best of our knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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SIGNATURES

After reasonable inquiry and to the best of our knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct.

Dated as of July 30, 2007

AISLING CAPITAL II, LP

By: Aisling Capital Partners, LP
General Partner

By: Aisling Capital Partners LLC
Managing Member

By: /s/ Dennis Purcell

Name: Dennis Purcell
Title: Senior Managing Director

AISLING CAPITAL PARTNERS, LP

By: Aisling Capital Partners LLC
Managing Member

By: /s/ Dennis Purcell

Name: Dennis Purcell
Title: Senior Managing Director

AISLING CAPITAL PARTNERS LLC

By: /s/ Dennis Purcell

Name: Dennis Purcell
Title: Senior Managing Director

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/s/ Steve Elms

Steve Elms

/s/ Dennis Purcell

Dennis Purcell

/s/ Andrew Schiff

Andrew Schiff

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EXHIBIT INDEX

Exhibit 1. Joint Filing Agreement as required by Rule 13d-1(k)(1) under the Securities Exchange Act of 1934, as amended.