

VIVUS INC  
Form SC 13G  
March 09, 2011

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 13G\*  
(Rule 13d-102)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT  
TO RULES 13d-1(b), (c) AND (d) AND AMENDMENTS THERETO FILED  
PURSUANT TO 13d-2(b)

(Amendment No. [\_\_])\*

Vivus, Inc.  
(Name of Issuer)

Common Stock, \$.001 Par Value  
(Title of Class of Securities)

928551100  
(CUSIP Number)

March 4, 2011  
(Date of event which requires filing of this statement)

Check the appropriate box to designate the rule pursuant to which this Schedule 13G is filed:

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

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\*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 the disclosures provided in a prior cover page.

The information required in the remainder 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).



1 NAMES OF REPORTING PERSONS  
 I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)  
 SuttonBrook Capital Management LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*\* (a) ..  
 (b) x

3 SEC USE ONLY

4 CITIZENSHIP OR PLACE OF ORGANIZATION  
 Delaware

5	NUMBER OF	SOLE VOTING POWER
	SHARES	-0-
6	BENEFICIALLY	SHARED VOTING POWER
	OWNED BY	4,297,060
7	EACH	SOLE DISPOSITIVE POWER
	REPORTING	-0-
8	PERSON WITH	SHARED DISPOSITIVE POWER
		4,297,060

9 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
 4,297,060

10 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES ..  
 CERTAIN SHARES\*\*

11 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9)  
 5.2%

12 TYPE OF REPORTING PERSON\*\*  
 PN

\*\* SEE INSTRUCTIONS BEFORE FILLING OUT!

1 NAMES OF REPORTING PERSONS  
 I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)  
 SuttonBrook Capital Portfolio L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*\* (a) ..  
 (b) x

3 SEC USE ONLY

4 CITIZENSHIP OR PLACE OF ORGANIZATION  
 Cayman Islands

NUMBER OF	5	SOLE VOTING POWER
SHARES		-0-
BENEFICIALLY	6	SHARED VOTING POWER
OWNED BY		3,308,466
EACH	7	SOLE DISPOSITIVE POWER
REPORTING		-0-
PERSON WITH	8	SHARED DISPOSITIVE POWER
		3,308,466

9 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
 3,308,466

10 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES ..  
 CERTAIN SHARES\*\*

11 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9)  
 4.0%

12 TYPE OF REPORTING PERSON\*\*  
 PN

\*\* SEE INSTRUCTIONS BEFORE FILLING OUT!

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1 NAMES OF REPORTING PERSONS  
 I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)  
 SuttonBrook Eureka Fund LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*\* (a)   
 (b)

3 SEC USE ONLY

4 CITIZENSHIP OR PLACE OF ORGANIZATION  
 Delaware

5	NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	6	SOLE VOTING POWER -0- SHARED VOTING POWER 988,594
7		8	SOLE DISPOSITIVE POWER -0- SHARED DISPOSITIVE POWER 988,594

9 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
 988,594

10 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES   
 CERTAIN SHARES\*\*

11 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9)  
 1.2%

12 TYPE OF REPORTING PERSON\*\*  
 PN

\*\* SEE INSTRUCTIONS BEFORE FILLING OUT!

1 NAMES OF REPORTING PERSONS  
 I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)  
 John London

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*\* (a)   
 (b)

3 SEC USE ONLY

4 CITIZENSHIP OR PLACE OF ORGANIZATION  
 United States

5	NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	6	SOLE VOTING POWER -0-
7		8	SHARED VOTING POWER 4,297,060
8		9	SOLE DISPOSITIVE POWER -0-
9		10	SHARED DISPOSITIVE POWER 4,297,060

9 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
 4,297,060

10 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES   
 CERTAIN SHARES\*\*

11 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9)  
 5.2%

12 TYPE OF REPORTING PERSON\*\*  
 IN

\*\* SEE INSTRUCTIONS BEFORE FILLING OUT!

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Item 1a). NAME OF ISSUER.

The name of the issuer is Vivus, Inc. (the "Company").

Item 1b). ADDRESS OF ISSUER'S PRINCIPAL EXECUTIVE OFFICES:

The Company's principal executive offices are located at 1172 Castro Street, Mountain View, California 94040.

Item 2a). NAME OF PERSON FILING:

This statement is filed by:

- (i) SuttonBrook Capital Portfolio L.P., a Cayman Islands limited partnership (the "Master Fund"), with respect to the shares of Common Stock (as defined in Item 2(d) below) directly held by it;
- (ii) SuttonBrook Eureka Fund LP, a Delaware limited partnership (the "Eureka Fund"), with respect to the shares of Common Stock directly held by it;
- (iii) SuttonBrook Capital Management LP, a Delaware limited partnership (the "Investment Manager"), as investment manager to the Master Fund and the Eureka Fund, with respect to the shares of Common Stock directly held by the Master Fund and the Eureka Fund; and
- (iv) John London ("Mr. London"), as managing member of the general partner of the Investment Manager, with respect to the shares of Common Stock directly held by the Master Fund and the Eureka Fund.

The foregoing persons are hereinafter sometimes collectively referred to as the "Reporting Persons." Any disclosures herein with respect to persons other than the Reporting Persons are made on information and belief after making inquiry to the appropriate party. In addition, SuttonBrook Capital Associates LP, a Delaware limited partnership, SuttonBrook Capital Associates LLC, a Delaware limited liability company, SuttonBrook Eureka Fund GP LLC, a Delaware limited liability company, SuttonBrook Holdings LLC, a Delaware limited liability company, and SuttonBrook Capital Associates Cayman, Ltd., a Cayman Islands exempted company, may be deemed to directly or indirectly control the Master Fund, the Eureka Fund or the Investment Manager and therefore, may be deemed to beneficially own the shares of Common Stock directly held by the Master Fund and the Eureka Fund.

Item 2b). ADDRESS OF PRINCIPAL BUSINESS OFFICE OR, IF NONE, RESIDENCE:

The address of the business office of each of the Reporting Persons is c/o SuttonBrook Capital Management LP, 598 Madison Avenue, 6th Floor, New York, NY 10022.

Item 2c). CITIZENSHIP:

The Master Fund is a limited partnership organized under the laws of the Cayman Islands. The Investment Manager and the Eureka Fund are limited partnerships organized under the laws of the State of Delaware. Mr. London is a citizen of the United States.

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Item 2d). TITLE OF CLASS OF SECURITIES:

Common Stock, \$0.001, par value (the "Common Stock").

Item 2e). CUSIP NUMBER:

928551100

Item 3. IF THIS STATEMENT IS FILED PURSUANT TO RULES 13d-1(b) OR 13d-2(b) OR (c), CHECK WHETHER THE PERSON FILING IS A:

- (a) " Broker or dealer registered under Section 15 of the Act,
- (b) " Bank as defined in Section 3(a)(6) of the Act,
- (c) " Insurance Company as defined in Section 3(a)(19) of the Act,
- (d) " Investment Company registered under Section 8 of the Investment Company Act of 1940,
- (e) " Investment Adviser registered under Section 203 of the Investment Advisers Act of 1940,
- (f) " Employee Benefit Plan or Endowment Fund in accordance with 13d-1(b)(1)(ii)(F),
- (g) " Parent Holding Company or control person in accordance with Rule 13d-1(b)(ii)(G),
- (h) " Savings Association as defined in Section 3(b) of the Federal Deposit Insurance Act,
- (i) " Church Plan that is excluded from the definition of an investment company under Section 3(c)(14) of the Investment Company Act of 1940,
- (j) " Group, in accordance with Rule 13d-1(b)(1)(ii)(J).

If this statement is filed pursuant to Rule 13d-1(c), check this box:  x

Item 4. OWNERSHIP.

The percentages used herein and in the rest of Item 4 are calculated based upon 81,888,089 shares of Common Stock outstanding as of February 18, 2011 as reported by the Company in its Annual Report Form 10-K for the fiscal year ended December 31, 2010, filed on February 28, 2011.

A. SuttonBrook Capital Management LP

- (a) Amount beneficially owned: 4,297,060
- (b) Percent of class: 5.2%
- (c)
  - (i) Sole power to vote or direct the vote: -0-
  - (ii) Shared power to vote or direct the vote: 4,297,060
  - (iii) Sole power to dispose or direct the disposition: -0-
  - (iv) Shared power to dispose or direct the disposition of: 4,297,060

B. SuttonBrook Capital Portfolio L.P.

- (a) Amount beneficially owned: 3,308,466
- (b) Percent of class: 4.0%
- (c)
  - (i) Sole power to vote or direct the vote: -0-

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(ii)	Shared power to vote or direct the vote: 3,308,466
(iii)	Sole power to dispose or direct the disposition: -0-
(iv)	Shared power to dispose or direct the disposition: 3,308,466

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C. SuttonBrook Eureka Fund LP

- (a) Amount beneficially owned: 988,594
- (b) Percent of class: 1.2%
- (c)
  - (i) Sole power to vote or direct the vote: -0-
  - (ii) Shared power to vote or direct the vote: 988,594
  - (iii) Sole power to dispose or direct the disposition: -0-
  - (iv) Shared power to dispose or direct the disposition: 988,594

D. John London

- (a) Amount beneficially owned: 4,297,060
- (b) Percent of class: 5.2%
- (c)
  - (i) Sole power to vote or direct the vote: -0-
  - (ii) Shared power to vote or direct the vote: 4,297,060
  - (iii) Sole power to dispose or direct the disposition: -0-
  - (iv) Shared power to dispose or direct the disposition of: 4,297,060

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

Not applicable.

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

Not applicable.

Item 7. IDENTIFICATION AND CLASSIFICATION OF THE 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.

See Item 2.

Item 9. NOTICE OF DISSOLUTION OF GROUP.

Not applicable.

Item 10. CERTIFICATION.

Each of the Reporting Persons hereby makes the following certification:

By signing below each Reporting Person certifies that, to the best of its 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.

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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: March 9, 2011

SUTTONBROOK CAPITAL MANAGEMENT LP

By: SuttonBrook Holdings LLC, as General Partner

By: /s/ John London

Name: John London

Title: Managing Member

SUTTONBROOK CAPITAL PORTFOLIO L.P.

By: Suttonbrook Capital Associates Cayman Ltd., as General Partner

By: /s/ John London

Name: John London

Title: Director

SUTTONBROOK EUREKA FUND LP

By: SuttonBrook Eureka Fund GP LLC, as General Partner

By: /s/ John London

Name: John London

Title: Authorized Person

/s/ John London

John London

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EXHIBIT 1

JOINT ACQUISITION STATEMENT  
PURSUANT TO RULE 13d-1(k)

The undersigned acknowledge and agree that the foregoing statement on Schedule 13G is filed on behalf of each of the undersigned and that all subsequent amendments to this statement on Schedule 13G shall be filed on behalf of each of the undersigned without the necessity of filing additional joint acquisition statements. The undersigned acknowledge that each shall be responsible for the timely filing of such amendments, and for the completeness and accuracy of the information concerning him or it contained therein, but shall not be responsible for the completeness and accuracy of the information concerning the others, except to the extent that he or it knows or has reason to believe that such information is inaccurate.

DATED: March 9, 2011

SUTTONBROOK CAPITAL MANAGEMENT LP

By: SuttonBrook Holdings LLC, as General Partner

By: /s/ John London

Name: John London  
Title: Managing Member

SUTTONBROOK CAPITAL PORTFOLIO L.P.

By: Suttonbrook Capital Associates Cayman Ltd., as General Partner

By: /s/ John London

Name: John London  
Title: Director

SUTTONBROOK EUREKA FUND LP

By: SuttonBrook Eureka Fund GP LLC, as General Partner

By: /s/ John London

Name: John London  
Title: Authorized Person

/s/ John London  
John London