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Earnings management, politiche di bilancio e falso in bilancio. Il difficile confine tra uso ed abuso della discrezionalità degli amministratori in sede di valutazione

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ABSTRACT: (THE SELF-SERVING USE OF JUDGEMENT IN FINANCIAL REPORTING: THE BOUNDARY BETWEEN EARNINGS MANAGEMENT AND FRAUDULENT ACCOUNTING) *Measuring financial performance and financial position of a going concern requires the extensive use of estimations. In order to guarantee the maximum relevance of those estimations, managers have to be granted with a sufficient deal of discretion, so that they can reflect their own expectations into the measurement of the items to be reported in the annual financial statements. But managers are deeply involved into the entity's affairs and they might have many and extremely diversified reasons to be tempted to use that discretion in an opportunistic way, so that rather than reflecting their sincere expectations in the measurement process they might prefer "managing the earnings" so to adjust them accordingly to their private goals. Whereas previous literature has proved how often this does happen, it is not easy to distinguish the boundaries over which the use of discretion is referred to as "earnings management" (EM) or might even turn into fraudulent accounting. This work, based on the analysis of previous literature, tackles those issues and concludes that the use of discretion has to be considered an exercise of EM when it is "deliberately" addressed to obtain a result different from the one that would have been obtained had the discretion been used in a "neutral" way, no matter what it is the final purpose of that use. Therefore, in this perspective, adjustments made to prevent the short term result obtained by a consistent application of GAAP from giving misleading information about the long term performance of the entity (politiche di bilancio) are to be considered a form, even if a "beneficial" form, of EM. When, instead, the deliberate opportunistic use of discretion is intended to mislead the users, the EM is qualified as "pernicious", even if not yet necessarily illegal. Relevant literature is consistent in qualifying EM illegal when it is not compliant with the GAAP, but, again, when it comes to use of discretion, it is difficult to establish when GAAP have been respected. As far as estimations are concerned there are no fixed rules that can be set in the GAAP, so that accounting standards can just address the logical process that a reasonable manager should follow to form his estimation as well as a minimum set of variables that he should consider. It is, therefore, suggested that the use of discretion can be told not compliant with GAAP, and therefore the EM can be told illegal, when the manager has not respected that process or has ignored those variables. This last issue is tackled in the context of Italian regulation where, according to a recent ruling of the Supreme Court, the current legislation, enforced to enhance the criminal relevance of Fraudulent Accounting, might have instead reduced it excluding from its domain the effects of erroneous estimations.*

KEYWORDS: *earnings management, fraudulent accounting, measurement*

1. Premessa

I macroscopici fenomeni di corruzione e di evasione fiscale degli ultimi anni, resi ancor più intollerabili dalle difficoltà che la crisi finanziaria ha creato alla maggioranza dei cittadini, hanno ravvivato l'attenzione attorno al fenomeno della *alterazione dei dati contabili*. Ai livelli istituzionali più elevati è maturata la condivisibile opinione dell'esistenza di uno stretto rap-

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